

EXHIBIT DDD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MCDONALD'S CORPORATION,

Plaintiff,

-against-

Index No.:

1:19-cv-06471

VANDERBILT ATLANTIC HOLDINGS LLC,

Defendant.

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September 17, 2021

10:02 A.M.

EXAMINATION BEFORE TRIAL of CAROL DEMARCO, the
Witness herein, taken by the attorney for the
Defendant, pursuant to Notice, held remotely, before
Melissa Leonetti, RPR, a Notary Public of the State
of New York.

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A P P E A R A N C E S:

PASHMAN STEIN WALDER HAYDEN, PC
Attorneys for the Plaintiff
2900 Westchester Avenue, Suite 204
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BY: BRENDAN M. WALSH, ESQ.

MEISTER SEELIG & FEIN, LLP
Attorneys for the Defendant
125 Park Avenue, 7th Floor
New York, New York 10017

BY: HOWARD S. KOH, ESQ.

ALSO PRESENT:
STACY HOWARD
MICHAEL MEYER
NAT LOPEZ

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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their respective Counsel, that the certification, sealing and filing of the within examination will be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, will be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed before any Notary Public with the same force and effect as though signed and sworn to before this Court.

1 C. DEMARCO

2 C A R O L D E M A R C O, after having first been
3 duly sworn by a Notary Public of the State of New
4 York, was examined and testified as follows:

5 EXAMINATION BY

6 HOWARD S. KOH, ESQ.:

7 Q. Good morning, Ms. DeMarco. My name is
8 Howard Koh. I'm counsel for Vanderbilt Atlantic
9 Holdings, LLC, in this action that McDonald's, your
10 employer, has brought against my client.

11 I'm going to be taking your deposition
12 today. As we discussed before we went on the
13 record, it's important that we all speak one at a
14 time and to take a pause before we speak, so
15 please remember to do that.

16 Is that fair?

17 A. Yes.

18 Q. Have you ever been deposed before, Ms.
19 DeMarco?

20 A. No.

21 Q. Okay. Well, I will be asking you a
22 series of questions that relate to this case. Be
23 sure that you hear and understand the question. If
24 you do not hear or understand the question, please
25 ask me to repeat or rephrase and I will be happy to

1 C. DEMARCO

2 do that.

3 Does that sound fair?

4 A. Yes.

5 Q. If you would like to take a break at any
6 time, I'm happy to do that. Just please answer the
7 pending question and we can arrange to take a break
8 on the record if you let me know that's what you
9 would like to do.

10 Does that sound fair?

11 A. Yes.

12 Q. Let's begin, then.

13 What, if anything, did you do to
14 prepare for today's deposition?

15 A. I looked at the lease documents to
16 refresh my recollection of the lease and all the
17 option rent addendums and reviewed my file.

18 Q. When you say you reviewed your file, what
19 are you referring to specifically?

20 A. I reviewed my file that I keep on a deal
21 that I'm negotiating.

22 Q. Is that a paper file? A computer file?
23 Something else?

24 A. I would have reviewed details that I
25 would have saved on my computer as well as a paper

1 C. DEMARCO

2 file.

3 Q. So it's both computer and paper. Where
4 is this paper file kept?

5 A. Where is it kept?

6 Q. Is it in an office somewhere? In your
7 house?

8 A. My remote home office.

9 Q. Did you turn this file over to McDonald's
10 counsel in this case for production?

11 A. Yes.

12 Q. Did you arrange for electronic -- for
13 access to McDonald's counsel to your computer files?

14 A. Yes.

15 Q. This computer file, is it kept on a
16 McDonald's server or somewhere else?

17 A. I only have a McDonald's computer. I do
18 not have any other personal computer, personal
19 email. I don't have anything like that. So I don't
20 have a personal phone. I don't have a personal
21 email. So it would be on a McDonald's computer.

22 Q. So you own no personal cell phone?

23 A. I own no personal cell phone.

24 Q. Did McDonald's have access to your --
25 well, do you have a McDonald's-issued cell phone?

1 C. DEMARCO

2 A. Yes, I have a McDonald's-issued cell
3 phone.

4 Q. And did McDonald's have access to it to
5 review in advance of this deposition?

6 MR. WALSH: Objection to the form.

7 Q. Go ahead and answer if you understand the
8 question.

9 A. McDonald's has access to all equipment
10 McDonald's issues to its employees.

11 Q. Did you meet with anybody to discuss this
12 deposition prior to appearing here today?

13 A. I don't understand. Could you clarify
14 the question.

15 Q. Did you have either a personal meeting or
16 an online meeting or telephone call with anyone to
17 discuss your deposition prior to appearing here
18 today?

19 A. Yes.

20 Q. Who was that?

21 A. I met with in-house counsel and outside
22 counsel.

23 Q. Tell us the names of those people. I'm
24 not interested in what you discussed, just the
25 names.

1 C. DEMARCO

2 A. Brendan Walsh, Stacy Howard, and Mike
3 Meyer.

4 Q. Other than the three people you've just
5 listed, have you discussed your deposition with
6 anyone else?

7 A. No.

8 Q. Where are you sitting now giving this
9 deposition?

10 A. I'm sitting in a conference room in the
11 Stamford field office at 695 East Main Street in
12 Stamford, Connecticut.

13 Q. Is anybody else in the room with you?

14 A. There's no one else in the building.

15 Q. Okay.

16 Do you have your McDonald's-issued cell
17 phone with you?

18 A. Yes, I do.

19 Q. Can you turn it off and put it away for
20 the duration of this deposition, please.

21 A. It has been turned off and put away.
22 Prior to the start of the deposition, I turned it
23 off.

24 Q. Other than the Zoom app for this
25 deposition, the AgileLaw app, do you have any open

1 C. DEMARCO

2 applications in the computer you're sitting in front
3 of?

4 A. No.

5 Q. Did you do anything to search for
6 documents relating to this case before coming here
7 today?

8 MR. WALSH: Objection to the form. And
9 if you can clarify the time frame.

10 Q. At any time prior to coming here today,
11 did you, in response to a request from a lawyer from
12 McDonald's, do anything to search for documents
13 relevant to this case?

14 A. Can you repeat the question.

15 Q. Sure.

16 Prior to coming here today, did you do
17 anything to search for documents at the request of
18 a McDonald's lawyer or outside counsel that are
19 relevant to this case?

20 A. No, I didn't search for documents at the
21 request of a lawyer in connection with this case.
22 They have access to my computer and my files, so I
23 didn't search anything else.

24 Q. Is there anything that you're aware of
25 that would prevent you from testifying truthfully

1 C. DEMARCO

2 here today?

3 A. No.

4 Q. Can you describe your educational
5 background for us.

6 A. I have an associate's degree from Post
7 College. I have taken courses at University of
8 Connecticut and short of a language requirement
9 didn't complete my bachelor's and left the college.

10 I completed my curriculum to graduate
11 with an economics degree, bachelor's degree in
12 economics, short of one language requirement that
13 I did not complete. So my degree is an
14 associate's degree from Post College in marketing.

15 Q. What is your current position at
16 McDonald's?

17 A. I'm an asset manager.

18 Q. How long have you held that position?

19 A. 15 years.

20 Q. What are your responsibilities as an
21 asset manager for McDonald's?

22 A. I'm responsible for lease portfolio of
23 about 320 properties.

24 Q. Are those properties located in a
25 specific geographic region?

1 C. DEMARCO

2 A. Yes.

3 Q. Tell us what that region is.

4 A. It's the New York Metro region including
5 the five boroughs, 13 counties in New Jersey,
6 Fairfield County, Connecticut, and like eight
7 counties in New York State as well as Long Island.
8 So the New York City market. I've had the five
9 boroughs for 15 years in the New York City market.

10 Q. So during the entire 15 years you've been
11 employed by McDonald's as an asset manager, you've
12 always had the same territory?

13 A. That's correct.

14 Q. Does anybody report to you in your role
15 as an asset manager?

16 MR. WALSH: Objection to the form.

17 Q. You can answer if you understand.

18 A. Not currently. No one reports to me.

19 Q. In the past, has anybody reported to you?

20 A. Yes.

21 Q. Can you tell me when that changed?

22 A. I don't recall. It was years ago. It
23 was just over the 15 years I've had people report to
24 me as a training exercise and developing new asset
25 managers.

1 C. DEMARCO

2 Q. Do you report to anybody?

3 MR. WALSH: Objection.

4 A. Yes, I do.

5 Q. To whom do you report?

6 A. To Dave Kearns.

7 Q. What is his position?

8 A. He's a director of asset management.

9 Q. Do you know how long Mr. Kearns has held
10 that position?

11 A. At least 15 years since he hired me.

12 Q. That helps. Thank you.

13 MR. KOH: Let's bring up the 1998 0318
14 ground lease, Exhibit 1 to the complaint.

15 Nat can you do that, please.

16 Q. Now, that we all have the document, have
17 you seen what's been previously marked as Exhibit C
18 before, Ms. DeMarco?

19 A. It's a ground lease -- yes, I have seen
20 the ground lease before.

21 Q. Were you working at McDonald's when the
22 ground lease was negotiated?

23 A. Yes, I was.

24 Q. What was your title at the time?

25 A. So let me clarify. I was working with

1 C. DEMARCO

2 McDonald's. I was not handling or working for what
3 was the New York region at the time. I worked in
4 the New Jersey office as a new site acquisition
5 manager.

6 So although I was with McDonald's when
7 this lease was signed, I had no knowledge of this
8 at this time because I worked in a different
9 office and had a different geography.

10 Q. Is it accurate to say you didn't
11 participate in the negotiation of the ground lease
12 we're looking at?

13 MR. KOH: Objection to the form.

14 Q. You can answer if you understand it.

15 A. I did not negotiate this ground lease.

16 Q. Do you know who did?

17 A. No, I do not know who did.

18 MR. KOH: Let's bring up the next
19 document, please, which is -- I believe it
20 should be marked as my Exhibit 3. It's the
21 rent term addendum.

22 MR. WALSH: Are you able to see it?
23 It's showing up as document 1 on mine.

24 THE WITNESS: I see it.

25 Q. Are you familiar with what had been

1 C. DEMARCO

2 previously marked as Exhibit D?

3 A. Yes.

4 Q. Tell us what Exhibit D is.

5 MR. WALSH: Objection to the form.

6 Q. You may answer.

7 A. Exhibit -- it's -- I'm still not great at
8 this split screen thing. Exhibit D is the option
9 rent addendum.

10 Q. That's part of the lease for the property
11 at 840 Atlantic Avenue in Brooklyn, New York,
12 correct?

13 A. The option rent addendum is part of the
14 original ground lease for 840 Atlantic.

15 Q. I would like to look at the second page
16 of the option rent addendum marked as Exhibit D. I
17 would like to focus on the second paragraph there.

18 It reads: The rental value shall be
19 established based upon a definition of fair market
20 rental value as the price which an average
21 well-informed tenant would pay to an average
22 well-informed landlord.

23 Let me start again.

24 The rental value shall be established
25 based upon a definition of fair rental market

1 C. DEMARCO

2 value which an average well-informed tenant would
3 pay and an average well-informed landlord would
4 accept exclusive of tenant's improvements, knowing
5 all of the uses to which the property can be put
6 without duress on either party.

7 What does that paragraph mean to you?

8 MR. WALSH: Objection to the form and
9 to the extent that it asks this witness for a
10 legal conclusion.

11 MR. KOH: I understand.

12 Q. What does the paragraph mean to you?

13 A. I read it in the plain language that it's
14 written. I would interpret it to mean what it says.
15 Having done this for 15 years, I'm very familiar
16 with language similar to this. I take it for the
17 language as its written. I'm not sure what you're
18 looking for.

19 Q. Have you heard of the term "highest and
20 best use"?

21 A. Yes. In the 28 years I've been with
22 McDonald's, I've heard of the term "highest and best
23 use."

24 MR. WALSH: Objection to the form.

25 Q. What do you understand "highest and best

1 C. DEMARCO

2 use" to mean?

3 MR. WALSH: Objection to the form.

4 Q. You can answer.

5 A. I'll go back to the document. It means
6 knowing all the uses to which a property can be put.
7 So that, to me, is a short simplistic version of
8 "highest and best use," considering all zoning
9 subject to the lease, knowing all uses to which the
10 property can be put without duress on either party.

11 Q. Is it fair to say that what this clause
12 that we're looking at is telling us is the
13 definition of fair rental market value is the
14 highest and best use considering the existing zoning
15 at the property?

16 MR. WALSH: Objection to the form and
17 to the extent it calls for a legal
18 conclusion.

19 Q. You may answer.

20 A. I'm not clear with what you're asking.

21 Q. Well, what I'm trying to get at is: Does
22 this clause tell us that the fair market rental
23 value is defined as the "highest and best use"?

24 MR. WALSH: Objection.

25 Q. Given existing zoning.

1 C. DEMARCO

2 MR. WALSH: Objection to the form and
3 to the extent it calls for a legal
4 conclusion.

5 MR. KOH: You can object.

6 A. So, Howard, I'm not an appraiser and I'm
7 not an attorney. Can I ask you to repeat the
8 question. I'm sorry. I know what you were
9 thinking, but just if you can repeat your question.

10 Q. Absolutely.

11 What I'm trying to get at it is: Does
12 this clause tell us that the fair market rental
13 value is defined as the "highest and best use,"
14 taking into account all existing zoning?

15 MR. WALSH: Same objection.

16 Q. Go ahead.

17 A. Existing zoning New York law, I mean,
18 it's just not as narrowly defined as you're
19 describing it, so I don't agree with how you're
20 describing it.

21 It doesn't say "highest and best use"
22 here, so to say does this imply that this is the
23 highest and best use is making an assumption. I
24 would just read the language as it's written and
25 that's how I would proceed.

1 C. DEMARCO

2 Q. Tell me how you would distinguish the
3 language as is written from "highest and best use."

4 MR. WALSH: Objection to the form and
5 to the extent that the phrase hasn't been
6 defined.

7 A. I'm not an appraiser, Howard, so I
8 couldn't articulate that for you. Again, I'm
9 focused on the language that was in the lease, and
10 that's what we worked with.

11 You know, I can't answer what your
12 question is.

13 Q. In your view, how should this property be
14 appraised in light of this definition of fair market
15 rental value?

16 MR. WALSH: Objection to the form to
17 the extent it calls for a legal conclusion.

18 Q. You may answer.

19 A. Can you repeat the question.

20 Q. In your view, how should this property be
21 appraised, given this definition of fair rental
22 market value?

23 MR. WALSH: Same objection.

24 A. (No verbal response given.)

25 Q. Do you understand the question?

1 C. DEMARCO

2 A. I'm not an appraiser, so I can't
3 interpret what you're trying to connect. I read the
4 option rent addendum extensively and I read it as
5 you read it to me and I read it as it's written that
6 the fair market -- I'm sorry -- the rental value
7 shall be established based upon the definition of
8 fair market rental value as the price which an
9 average well-informed tenant would pay and an
10 average well-informed landlord would accept
11 exclusive of tenant's improvements, knowing all of
12 the uses to which the property can be put without
13 duress on either party.

14 And it goes on to say, you know, the
15 standard market data approach -- I mean, there's
16 more language to that. You just want to ask
17 questions on that one piece, but I think you have
18 to look at the entire document to fully understand
19 how this should be completed.

20 Q. In your view, how should the appraisal be
21 completed?

22 MR. WALSH: Objection to the form and
23 to the extent it calls for a legal
24 conclusion.

25 MR. KOH: I'm not asking for a legal

1 C. DEMARCO

2 conclusion. You can please drop that. It's
3 coaching.

4 MR. WALSH: I'm not coaching. I'm
5 making my objection.

6 Howard, you're asking a witness to
7 interpret a document.

8 MR. KOH: You're still doing it.

9 MR. WALSH: I stand by my objection.

10 MR. KOH: And I will ask the question.

11 Q. How should this property be appraised,
12 given -- my question is: In your view, how should
13 the appraisal for this property be completed?

14 MR. WALSH: Same objection.

15 A. (No verbal response given.)

16 Q. You may answer, Ms. DeMarco.

17 A. I'm trying to understand what you're
18 asking me. We have an option rent addendum which
19 defines how the process should work if the parties
20 cannot agree on the value.

21 And I was guided by the document, which
22 is more than the one paragraph and two sentences
23 or one long sentence that you and I read to each
24 other.

25 Q. I'm now giving you the opportunity to

1 C. DEMARCO

2 tell me based on the entire document how you believe
3 the appraisal should be completed.

4 MR. WALSH: Objection to the form.

5 Q. You may answer.

6 A. It should be completed for the purposes
7 of establishing the rent for the option based on the
8 option rent addendum.

9 Q. I understand.

10 Do you have to be an appraiser or a
11 lawyer to be able to tell whether an appraisal was
12 completed in accordance with the option rent
13 addendum?

14 MR. WALSH: Objection to the form.

15 A. I don't understand the question.

16 Q. I'll come back to it. Why don't we move
17 on to some other questions.

18 Have you been involved in -- are you
19 familiar with appraisals for other properties
20 beyond 840 Atlantic Avenue in Brooklyn?

21 MR. WALSH: Objection to the form.

22 A. Can you repeat the question.

23 Q. Have you been involved or are you
24 familiar with other appraisals beyond 840 Atlantic
25 Avenue in Brooklyn?

1 C. DEMARCO

2 A. Yes, I'm familiar with valuations. Not
3 always appraisals, but yes, I'm familiar with
4 valuations and appraisals for other properties.

5 Again, I've handled Brooklyn as part of
6 the New York City area for 15 years, so yes, I'm
7 familiar with appraisals.

8 Q. Can you describe how you're familiar with
9 appraisals.

10 MR. WALSH: Objection to the form.

11 A. Can you be more specific.

12 Q. How many appraisals have you read in your
13 career at McDonald's?

14 A. Well, so I've been at McDonald's for 28
15 years. I've been in the New York City market for
16 15. I've reviewed a fair amount of appraisals over
17 the 15 years in the boroughs as well as 28 years at
18 McDonald's. I don't have an exact number.

19 Q. So more than 100?

20 A. I don't even think it was 100.

21 Q. So more than 50?

22 A. I don't want to speculate, Howard. I've
23 reviewed a fair amount over the course of -- I would
24 review an appraisal if one was done for any number
25 of reasons, so...

1 C. DEMARCO

2 I never thought to stop and count,
3 Howard. I'm sorry.

4 Q. It's okay. Is it more than ten?

5 A. Yeah.

6 Q. Okay.

7 Have you ever ordered appraisals be
8 completed on McDonald's behalf?

9 MR. WALSH: Objection to the form.

10 Q. Have you ever requested appraisals be
11 completed for properties on behalf of McDonald's?

12 A. I've ordered appraisals on behalf of
13 McDonald's in connection with requirements in the
14 lease, yeah.

15 Q. Does McDonald's have any methodology that
16 it uses to track the fair market rental value of the
17 properties that it leases?

18 MR. WALSH: Objection to the form.

19 A. Can you repeat the question.

20 Q. Yes.

21 Does McDonald's have any system whereby
22 it tracks the fair market rental value of the
23 properties that it leases?

24 MR. WALSH: Same objection.

25 A. Not specifically to your question, no.

1 C. DEMARCO

2 We do track sites that have -- I track sites that
3 have fair market value options coming up. I track
4 all leases for the 320 sites that I manage in the
5 New York Metro market, and I track them on a
6 three-year basis, five-year basis, ten-year basis.

7 So there's all sorts of information
8 that I track, Howard.

9 Q. What do you track about the fair market
10 rental value specifically? Do you track those on a
11 three-year basis?

12 MR. WALSH: Objection to the form.

13 A. I track critical dates, and the critical
14 dates could be a lease ending with no options. It
15 could be a lease that has an unstated or undefined
16 rent. It might be a CPI adjustment that would need
17 to come in the future.

18 So I track all -- very date-driven
19 situations. I track all dates three years out,
20 five years out, ten years out. So I would know
21 any critical dates that were coming up on a
22 property.

23 And that critical date may not be just
24 something that has a rent reset. It could be just
25 ending no options. It could be an exercise of a

1 C. DEMARCO

2 stated rent option or a CPI option.

3 Q. And is the information that you track
4 limited to the dates or does it include other
5 information as well?

6 A. It includes other information.

7 Q. Can you tell us what that other
8 information is.

9 A. It includes the location. It includes
10 all term expires, so current term expires, all term
11 expires, an option exercise date, whether the site's
12 been modernized or not, how old the building is, the
13 address, the city, the state. Things like that.

14 Q. Did there come a time when you learned
15 that my client, Vanderbilt Atlantic Holdings, LLC,
16 had acquired the ground lease at 840 Atlantic
17 Avenue?

18 A. Yes. Your client told me he acquired the
19 property at 840 Atlantic Avenue in February of 2018.

20 Q. Was that on a telephone call?

21 A. Yes, it was on a call.

22 Q. Tell us everything you can remember that
23 was said on that call.

24 A. So Sam reached out to me to advise that
25 he entered into a 99-year lease for the property. I

1 C. DEMARCO

2 don't remember the exact date, but it was February
3 of 2018.

4 We had a conversation around the
5 upcoming option. We had a conversation about the
6 lease. He was very happy to tell me that he had a
7 99-year lease and that this property was a
8 redevelopment site and what would McDonald's do if
9 we didn't like the rent for the option.

10 I discerned very quickly in my short
11 conversation with him that he was trying to
12 develop an exit strategy for me and I'm trying to
13 talk about our plans to modernize the restaurant,
14 that we had, you know, ten years through 2039, and
15 the kids were all excited that we were going to
16 modernize the restaurant. You know, we started
17 modernizing the restaurant in January of 2018.

18 So we talked about -- I was very
19 excited to share with him. I congratulated him on
20 acquiring a 99-year lease, and it was nice to meet
21 him and I was very happy to tell him we were
22 modernizing the restaurant. And that had actually
23 started in January of 2018, and the kids at the
24 restaurant were very excited about it. They take
25 a lot of pride in when we modernize a restaurant.

1 C. DEMARCO

2 I was happy to share that with him.

3 He pivoted the conversation back to,
4 well, this is a redevelopment site and what would
5 you do if you don't like the rent.

6 And I said, well, it's a little -- we
7 didn't really start a conversation about rent on
8 that call. I said, it's a little premature to
9 have that conversation, Sam, but that, you know,
10 we're very happy at this restaurant.
11 Congratulations on acquiring the 99-year lease.
12 We're continuing to modernize.

13 And he didn't have any information on
14 that call about rent. I said the first step is
15 let's have a conversation about values.

16 But I was very disheartened, Howard,
17 that on the very first call he wanted to talk to
18 me about what I am going to do if McDonald's
19 didn't like the rent.

20 So just from the very first
21 conversation, he was talking about McDonald's
22 leaving and I'm trying to talk about how we're
23 here for the long-term, that we were looking to
24 modernize.

25 So we left the call and he was going to

1 C. DEMARCO

2 do some research and look at values. So that's
3 what I can remember.

4 Sorry for all the detail.

5 Q. I appreciate as much detail as you
6 provided. I appreciate the answer.

7 Did there come a time after this
8 conversation where you again spoke to Mr.
9 Rottenberg?

10 A. Yes.

11 Q. And when was that?

12 A. That was in May of 2018. We had received
13 a letter with his opinion of value or of rent that
14 he was thinking, and so we had a call to discuss
15 that in May. I don't recall the exact date.
16 Shortly after he sent us that letter, he and I got
17 on a call to discuss that.

18 MR. WALSH: Nat, can you bring up what
19 I had designated Exhibit Number 10.

20 Q. Is this the letter to which you just
21 referred?

22 A. Yes.

23 Q. Am I correct to assume that the
24 conversation that you had started to describe
25 occurred sometime in May, after May 10, 2018?

1 C. DEMARCO

2 A. Yes. After we received this letter, I
3 reached out to Sam to have a conversation. I
4 reached out a couple of times. We connected and we
5 had a conversation about this and his valuation.
6 I'll leave it there.

7 Q. Describe this conversation for me.

8 A. Well, I was, you know, surprised that he
9 had, you know, come up with a value of 975,000, and
10 the 80 percent, you know, is what's stipulated in
11 the lease, so that's a calculation.

12 But his value was 975,000, so I asked
13 him, Sam, can you help me understand how you came
14 up with this? Like, you know, what was your
15 methodology? What was your research?

16 And he said, well, I talked to brokers.
17 He didn't have comps. He didn't have a report.
18 He didn't have anything. Sam's response to me was
19 "I had a conversation with brokers."

20 And so I said we talked about this
21 letter and there was conversation at that very
22 first call that based on information that I had,
23 this was wildly in excess of what I personally
24 valued the site at in late 2017 for the purposes
25 of a reinvestment plan.

1 C. DEMARCO

2 So I was sharing with Sam -- I said,
3 Sam, you and I are like worlds apart in this. I
4 need to understand how you came up with this. And
5 I said, you know, can you share with me your
6 research.

7 He basically said he didn't have any
8 research. He didn't have a report. He didn't
9 have comparables. It was all based on
10 conversations with brokers.

11 There was no research, no reports, no
12 comps. Just conversations with brokers.

13 Q. And you said that this was wildly in
14 excess of what you personally valued the site in
15 late 2017 for purposes of a reinvestment plan; is
16 that correct?

17 A. Yeah, that's correct. Because if you
18 recall, when I spoke to Sam in February of 2018, I
19 mentioned to Sam that we were modernizing the
20 restaurant. So as part of that, we would -- you
21 know, I had done a value myself prior to January of
22 2018 before we started.

23 Q. And was this value reduced to writing?

24 A. Yes. It was an email that I gave to the
25 field office.

1 C. DEMARCO

2 Q. What did you value the rent at in that
3 2017 email that you gave to the field office?

4 MR. WALSH: Objection to the form.

5 Q. Go ahead. Answer the question if you
6 can.

7 A. I'd rather you clarify. I mean, I have
8 nothing here. You know, I'm doing this off memory
9 and this was 2017. I valued it -- and I could be
10 off slightly -- in the under 300,000 -- in the 250,
11 300, 325 -- something like that range.

12 But his value of 975 was two times what
13 I was thinking, so I was trying to understand from
14 Sam, like help me understand why you're thinking
15 this.

16 And he didn't have any facts to support
17 that number, and so I think we knew very quickly
18 this was not going to be something that he and I
19 could negotiate together.

20 Q. Do you recall how you came to the
21 understanding or belief that the property at 840
22 Atlantic Avenue would have a fair market rental
23 value of less than \$300,000 per year?

24 MR. WALSH: Objection to the form.

25 A. Can you repeat the question, please.

1 C. DEMARCO

2 Q. Do you recall how you came to the
3 understanding or belief that the property at 840
4 Atlantic Avenue would have a rental value of less
5 than \$300,000 per year?

6 MR. WALSH: Objection to the form to
7 the extent it mischaracterizes the testimony.

8 MR. KOH: It doesn't mischaracterize
9 the testimony.

10 Q. You can answer.

11 A. I'm thinking. What Sam did share with
12 me, Howard, was that he was -- you know, early on
13 when you recall the February 2018 call where Sam
14 said "this is a redevelopment site." Right?

15 That was then brought up again to me
16 when he -- when we talked about this letter of May
17 of 2018 again that that was a redevelopment site,
18 and so -- considering the zoning.

19 So when I valued the property in
20 October of 2017, approximately 2/4 of 2017
21 sometime, I was doing research on comparable
22 ground leases in the area and trying to understand
23 the value.

24 So I did my own internal research,
25 Howard, looking at LoopNet, looking at, you know,

1 C. DEMARCO

2 brokers' websites, getting information, just my 15
3 years' experience in Brooklyn and the deals I'm
4 familiar with.

5 So, I mean, I did my own research,
6 Howard, and I came up with that value prior to any
7 conversation with Sam. In October of 2017, I
8 didn't even know Sam had brought the property. I
9 didn't talk to Sam until February of 2018.

10 Q. Did anyone assist you with this research
11 that you were doing in October or the fourth quarter
12 of 2017?

13 A. No. That's part of what I do as an asset
14 manager.

15 Q. After you had this conversation with Sam
16 Rottenberg in May of 2018, what did you do next with
17 respect to the property at 840 Atlantic Avenue?

18 MR. WALSH: Objection to the form.

19 Q. Do you understand the question?

20 A. No. Can you repeat the question.

21 Q. Sure.

22 After you had this conversation with
23 Sam Rottenberg in May of 2018, what did you do
24 next with respect to the property at 840 Atlantic
25 Avenue?

1 C. DEMARCO

2 A. I don't -- I don't recall exactly what I
3 did shortly after that. I don't recall.

4 Q. Okay. When was the next time that you
5 spoke to Mr. Rottenberg concerning the property at
6 840 Atlantic Avenue?

7 A. I actually don't recall when we talked
8 after that. I think he and I both knew this was
9 going to be a very different -- I would tell you,
10 Howard, 90 percent of what I do as an asset manager
11 is I negotiate these types of fair market value rent
12 resets with landlords directly outside of not
13 needing to use the formal process as dictated in the
14 lease.

15 This is, you know, an exception and one
16 of the few times we've done that. Other times
17 I've done that actually, Howard, is if it's an
18 unsophisticated landlord and they're just not
19 comfortable negotiating on their own.

20 But typically, in the 15 years I've
21 been here, 90 percent or more of these fair market
22 value deals, I negotiate directly with the
23 landlord.

24 And from Sam's first conversation with
25 me in February of 2018 where he said, Carol, well,

1 C. DEMARCO

2 what is McDonald's going to do if they don't like
3 the rent, he was trying to talk about an exit
4 strategy with me, not trying to work through a
5 rent with me.

6 Then I get this letter in May of 2018
7 which was wildly excessive where I came up with a
8 value which only then further confirms my
9 feelings, that he's -- without any documentations
10 for him, that he's trying to make a rent that's
11 something then we won't want to stay there.

12 So after this letter and our call in
13 May, I said, well, we are so far apart, we're
14 going to need to use the formal process, and he
15 agreed. And then I don't recall the next time I
16 spoke to him.

17 Q. I assume you know who Sharon Locatell is,
18 correct?

19 A. Yes, I know Sharon Locatell. She's the
20 president of Appraisers and Planners.

21 Q. Were you the person who on McDonald's
22 behalf retained Sharon Locatell for this project?

23 A. I don't believe I retained her. I had
24 reached out to discuss with her that I would need --
25 I reached out to see if she would be available, but

1 C. DEMARCO

2 I believe the retention -- I don't know if I
3 retained her. Usually I do that in connection with
4 an engagement letter that's done by legal.

5 Q. But were you the person at McDonald's who
6 made the initial contact with Sharon Locatell
7 concerning the property at 840 Atlantic Avenue?

8 A. I don't recall who had the first
9 conversation with her, Howard.

10 Q. Okay.

11 Had you worked with Sharon Locatell
12 before?

13 A. Yes, I have.

14 Q. On how many occasions?

15 MR. WALSH: Objection to the form.

16 Q. You can answer that question.

17 A. I don't know exactly how many times I've
18 worked with Sharon, but I've worked with Sharon at
19 least ten years, maybe. It would typically only be
20 in connection if I needed an appraiser for
21 something.

22 I don't always get an appraisal,
23 Howard, on all the deals I touch during the year.
24 It's on a select basis.

25 Q. I understand.

1 C. DEMARCO

2 MR. KOH: Let's bring up what I have
3 designated as Document Number 8. It was
4 previously marked as Exhibit E at Mr. Meyer's
5 deposition.

6 Q. Let me know when that's in front of you.

7 A. I opened Exhibit E, yes.

8 Q. Let me know when you have had a chance to
9 review that and I will ask some questions.

10 A. Okay.

11 Q. Do you see in -- well, first of all, tell
12 us who Brooke Sugaski-Hartman is.

13 Who is that?

14 A. She's a real estate person with
15 McDonald's.

16 Q. What do her responsibilities entail?

17 A. She supports the field office. I don't
18 know exactly what her role is, but she is the real
19 estate lead, I guess you would say, for the Stamford
20 -- the New York Metro area that I cover in the
21 Stamford field office.

22 Q. Let's first focus on your email to
23 Ms. Hartman where you say: Subject of valuation --
24 and this is in the fourth paragraph of your email.

25 "Subject of valuation. I would

1 C. DEMARCO

2 estimate range based on other deals in Brooklyn,
3 not in this exact area. I would value land of 250
4 to 300 ground lease today."

5 How did you come up with that number
6 for that range?

7 A. I did research on -- you know, based on
8 my 15 years of experience in handling Brooklyn and
9 the five boroughs, I, you know, considered based on
10 my knowledge, and I also researched, you know,
11 platforms that have information on ground leases
12 like LoopNet and also markets.

13 You know, there's many brokerage
14 websites that would offer information on values,
15 so that in addition to my experience in this area
16 for 15 years.

17 Q. And you then write: If you assume 4
18 percent per year appreciation for rent in 2019, rent
19 estimate 270,000 to 325,000 per the lease, our rent
20 would be 80 percent, or 216,000 to 260,000 in 2019.

21 Why did you choose the 4 percent
22 appreciation rate?

23 A. It was conservative. You know, land
24 values haven't appreciated more than 3 percent a
25 year over the last 20 years historically across the

1 C. DEMARCO

2 country. But I was trying to be more conservative
3 and I said 4 percent of the land appreciation value.

4 Q. What about in Brooklyn? What do you know
5 of the appreciation of land values in Brooklyn
6 during this time period?

7 MR. WALSH: Objection to the form.

8 Q. You can answer.

9 A. For this particular property, I thought
10 that that was a conservative appreciation value to
11 use in this preliminary analysis.

12 Q. Why?

13 A. Because, again, values have not
14 appreciated more -- why don't you repeat your
15 question so I'll try to help you get to what -- what
16 are you asking.

17 Q. I'm asking why you think 4 percent was a
18 conservative number to use for the appreciation.

19 A. I thought it was more aggressive than 3
20 percent, which is what I would use typically in
21 other areas outside the boroughs.

22 Q. Did you do anything to study what was
23 happening in terms of of appreciation or
24 depreciation of land values, specifically in the
25 Brooklyn land market, as opposed to what was

1 C. DEMARCO

2 happening nationally?

3 MR. WALSH: Objection to the form.

4 Q. You may answer.

5 A. I didn't study anything. I don't accept
6 your question as outlined.

7 Again, I had the Brooklyn market for 15
8 years. I renegotiated properties in Brooklyn.
9 I'm familiar with the Brooklyn market. I don't --
10 I don't know what else you're asking me.

11 Q. Okay. I think you've answered the
12 question. Thank you.

13 Did you have a conversation with Ms.
14 Hartman as this email seems to indicate?

15 A. I don't recall if we had a conversation,
16 but there was conversation about -- you could see in
17 the subject line of my email from October of 2017,
18 it says approval requested tenure exception, so
19 there was discussion about it because we didn't have
20 an established rent for the next option and we
21 needed to understand or have a comfort level of what
22 that could be so we could go forward with the
23 modernization of the restaurant.

24 So I don't recall when there -- there
25 were conversation.

1 C. DEMARCO

2 Q. What do you recall of these
3 conversations?

4 A. I don't recall specifically. Again, it
5 was me sharing with her my valuation, and you'll see
6 in October I said I can add this to my list. I said
7 there's a formal process with appraisers if the
8 parties cannot agree to the rent. I said I can add
9 this to my list and call and see if the landlord
10 would be interested.

11 (Reporter clarification.)

12 A. Meaning I can add this site to the list
13 and call the landlord to see if he would be
14 interested to convert options to firm terms to
15 eliminate the fair market value process.

16 Because again, Howard, we had one fair
17 market value reset and then we had three
18 additional five-year options at stated increases.

19 Q. Those were the 15 -- I'm sorry. I didn't
20 mean to cut you off.

21 A. That's okay. They were at 15 percent
22 over what was the first of four- or five-year
23 options. Very often landlords are very interested
24 in having McDonald's commit to a longer term, and so
25 I was saying that we could look to do that.

1 C. DEMARCO

2 Q. Okay.

3 A. And then in this email on the top from
4 February 8 of 2018, it says: Brooke, let me know
5 when you have time to discuss. The new landlord
6 reached out to me to discuss the fair market value
7 rent and the upcoming option and I would like to
8 discuss.

9 So, as I said to you, when I first
10 discussed my conversation with Sam in February of
11 2018, I wanted to let the field office be aware
12 that the landlord was asking to discuss an exit
13 strategy, not to establish the rent, and that we
14 would likely end up proceeding in accordance with
15 the lease with a formal process.

16 Q. Understood. Thank you.

17 THE WITNESS: Can we take a break soon?

18 MR. KOH: We can take a break now. How
19 long would you like?

20 THE WITNESS: Five minutes.

21 (Whereupon, there was a pause in the
22 proceeding.)

23 Q. So we were looking at what had been
24 previously marked as Exhibit E, and in the subject
25 line here there's a term called "ten-year

1 C. DEMARCO

2 exception."

3 What is a ten-year exception?

4 A. It's a -- it's a request -- well, a
5 ten-year exception comes up -- when you want to
6 reinvest in a restaurant, you need -- there's a
7 financial matrix that we consider for investment to
8 the amount of term at stated rents.

9 And when you do not have enough term at
10 stated rents -- in this case, because we had a
11 fair market rent option coming up -- we would need
12 what's called a ten-year exception from that
13 matrix.

14 Q. Who is responsible for granting the
15 ten-year exceptions, if anyone?

16 A. It's approved through the field office,
17 and the US controller group, the finance group.
18 There's several people, but it's those three
19 departments effectively.

20 Q. We'll come to the approval shortly.

21 MR. KOH: Let's bring up what I had
22 marked as Exhibit 9, which is a February 26,
23 2018, email from Jared Jones to Ms. DeMarco.

24 A. Let me familiarize myself with Exhibit F.

25 Q. Okay.

1 C. DEMARCO

2 A. I'm ready.

3 Q. Jared Jones, what company does he work
4 for?

5 A. Bohler Engineering.

6 Q. Why were you contacting Mr. Jones and
7 Bohler Engineering with respect to the property at
8 840 Atlantic Avenue?

9 A. I was initially contacting Jared to
10 understand the zoning based on my conversation with
11 Sam in that same month. Earlier you recall I spoke
12 to Sam in February of 2018 and then May of 2018.
13 But in February of 2018, specifically February 8th,
14 I think, he was talking about this being a
15 redevelopment site, so I wanted to get more
16 information.

17 I subsequently didn't have Jared
18 prepare anything for us, so this was just asking
19 for, you know, a proposal, but Bohler Engineering
20 did not prepare anything on this site.

21 Q. Did anybody do an evaluation of the
22 zoning of this site at your request?

23 MR. WALSH: Objection to the form.

24 Q. Let me rephrase.

25 To your knowledge, did anybody at the

1 C. DEMARCO

2 request of McDonald's do a valuation of the zoning
3 at the site of 840 Atlantic Avenue?

4 MR. WALSH: Same objection.

5 Q. Go ahead. You may answer, Ms. DeMarco.

6 A. The -- when we ultimately retained the
7 MAI appraiser, they would have looked at the zoning
8 as part of their analysis. We did some preliminary
9 -- she did some preliminary review of that. Zoning
10 would have been considered part of the appraisal,
11 Howard. That's the short story.

12 Q. Did you discuss the zoning issues with
13 Sharon Locatell?

14 MR. WALSH: Objection to the form.

15 A. I don't think there were zoning issues,
16 Howard. I don't understand your question. There
17 wasn't an issue with the zoning.

18 Q. Did you discuss the zoning status with
19 Sharon Locatell?

20 MR. WALSH: Objection to the form.

21 A. I don't understand "status," either.

22 Q. What, if anything, did you discuss with
23 Sharon Locatell concerning zoning at 840 Atlantic
24 Avenue?

25 MR. WALSH: Objection to the form.

1 C. DEMARCO

2 A. I don't recall exactly. Just that
3 because of my conversation with Sam that it was his
4 opinion that it was a redevelopment site, and
5 understanding that the language in the option rent
6 addendum that we reviewed earlier says considering
7 all uses, I wanted to make sure that we looked at
8 the zoning -- what's the FAR available under the
9 existing zoning at that time.

10 Q. You used the term "FAR." Can you tell us
11 what that means to you.

12 A. It's floor area ratio.

13 Q. How does that affect zoning?

14 MR. WALSH: Objection to the form.

15 Q. How do you understand floor area ratio to
16 affect zoning issues?

17 MR. WALSH: Objection to the form.

18 Q. You can answer that one.

19 A. So you would -- I have -- the zoning
20 impacts the ability to build density on a property.
21 It's what's allowable to be built based on the FAR.
22 If the -- his property is split-zoned into M1-1 and
23 R6B, so -- and they have different FAR for each of
24 the zones.

25 Again, Howard, I'm not an appraiser,

1 C. DEMARCO

2 but I just want to -- just to give some context,
3 we wanted to make sure we looked at the FAR or
4 available buildable on that property in that split
5 zone.

6 So I didn't have Jared Jones. He did
7 nothing. He didn't do anything for McDonald's.
8 But Sharon would have looked at that.

9 MR. WALSH: Let's bring up what's been
10 marked as Number 13. It was a document
11 marked as Exhibit H.

12 Q. Let me know when you have that in front
13 of you.

14 A. I have it. I'm just going to familiarize
15 myself with it.

16 Q. Okay.

17 A. It's 13 pages. Just give me one minute.

18 Q. Take your time.

19 A. Okay, Howard. I'm ready.

20 Q. Do you recognize what Exhibit H is?

21 A. Yes, I do.

22 Q. Can you tell us what it is, please.

23 A. It's a letter from Appraisers and
24 Planners.

25 Q. Right, and you got a copy of it?

1 C. DEMARCO

2 A. Yes, I was copied on it.

3 Q. There's handwriting on the first page.

4 Do you know whose handwriting that is?

5 A. No idea.

6 Q. Okay.

7 A. Not mine.

8 Q. But you received Exhibit H without the
9 handwriting and you read it?

10 MR. WALSH: Objection to the form.

11 A. Yes.

12 Q. Okay.

13 A. I have read this letter dated December
14 12, 2018, from Appraisers and Planners, yes.

15 Q. Did you ask for this letter to be
16 prepared?

17 A. I asked Sharon to evaluate this, assuming
18 the zoning, which is what she did. This was just
19 preliminary information in connection with our
20 option, so again --

21 I will back up. We had a blind option
22 exercise, which means that we would have to make a
23 decision to not terminate the lease. Because the
24 options are automatic. They automatically extend
25 with no notice required by the tenant.

1 C. DEMARCO

2 But as part of my process as an asset
3 manager, we evaluate all sites that have options.
4 So this had an option, and I had done preliminary
5 review of the values in October of 2017 and then I
6 spoke to Sam in February of 2018 and May of 2018.

7 We had an option and he, you know,
8 wanted to know what we would do if we didn't like
9 the rent, if we left, that this was a
10 redevelopment site.

11 So I asked Sharon for -- understanding
12 the value based on the FAR as a worst case
13 scenario. Because I was very confident that the
14 option rent addendum language was very clear that
15 it would be -- the rent for the option would be
16 determined using comparable ground leases.

17 But in trying to understand where Sam
18 was coming from, I asked Sharon to prepare a value
19 using the zoning so I could understand the worst
20 case scenario.

21 Q. On page 6, there's the bold language, and
22 it's Bates-stamped number MCD 00299. It says Sales
23 Comparison Approach.

24 What does that mean to you?

25 A. You're on page 6?

1 C. DEMARCO

2 Q. Yes.

3 A. So first off, I didn't -- I had requested
4 Sharon do this for my internal purposes of
5 exercising -- you know, we call it exercising an
6 option, but internally that we would not be electing
7 to terminate. Right?

8 So I put forth a recommendation, and as
9 part of that, I try to get as much detail as
10 possible. Although the lease -- I wanted to
11 understand the sales comparison approach and the
12 fee value.

13 And just so you know, Howard, for
14 everything I do at McDonald's, all the leasing I
15 do, we get a fee value on the property whether --
16 so this wasn't -- me requesting this from Sharon
17 was not in connection with the formal process. It
18 was part of what I needed to provide additional
19 context to the field office with my recommendation
20 to exercise the option blind. I wanted to
21 understand the fee value as well as the ground
22 lease value.

23 So this sales comparison approach was
24 done, a fee value in this case. I get a fee value
25 on everything I negotiate, even if it's

1 C. DEMARCO

2 dead-ending, no option.

3 Anyway, I just wanted to provide some
4 context of this sales comparison approach that I
5 asked Sharon to do was to evaluate the zoning and
6 understand that better. It was not in connection
7 with what we would ultimately need to do for the
8 option rent addendum. It was the internal package
9 approval so I could show best case/worst case.

10 Does that make sense?

11 Q. It's your answer, and yes, I think I
12 follow it.

13 I'm curious. Why do you get a fee
14 value on everything?

15 A. It's required by the US controller group
16 based on accounting. They wanted -- I think it's
17 only changed in the last couple of years based on
18 accounting. We do it for all sites that we're
19 negotiating.

20 Q. So it's a McDonald's overall policy?

21 A. Correct. I don't know that it's a
22 policy. You know, I don't know if there's a form
23 somewhere that it says that, so I don't know that
24 it's a policy, but it's something that we do on all
25 renegotiations whether it's -- I would get it even

1 C. DEMARCO

2 if it's a CPI adjustment. The only time we do
3 not -- a CPI adjustment. So we get it on all lease
4 renegotiations regardless of the reason for the
5 renegotiation.

6 Q. Do you understand why this is a
7 requirement of McDonald's?

8 A. I think it's -- they want to have the fee
9 -- I think there's new accounting rules that came
10 out as well that it's important to have that.
11 There's new financial FASB accounting, and I don't
12 know all that.

13 (Reporter clarification.)

14 Q. Financial --

15 A. New accounting -- yeah.

16 MR. KOH: She said FASB, F-A-S-B.

17 Q. Financial Accounting Standards Board. Is
18 that correct, Ms. DeMarco?

19 A. Yes.

20 MR. WALSH: So I'm looking at the feed.

21 A question was asked. I believe she
22 answered. It doesn't look like that full
23 answer has been captured.

24 THE COURT STENOGRAPHER: I did ask for
25 a clarification, and please be assured that

1 C. DEMARCO

2 every word will be in the final transcript.

3 Q. Let me try to ask the question again.

4 Just so I understand, if you could tell
5 us one more time, Ms. DeMarco, do you understand
6 why McDonald's requires a fee valuation in these
7 situations?

8 A. It's not in this situation. For all
9 lease renegotiations at McDonald's, we get a fee
10 value and a ground lease value, and I think it has
11 to do with new requirements, putting ground leases
12 on your books.

13 I think it's a tax thing. I'm not an
14 accountant or CPA, so I don't have the formal
15 answer to that, but I think it has to do with
16 accounting requirements and reporting requirements
17 for ground leases.

18 MR. WALSH: Let's bring up what I've
19 marked as Number 14. This has been
20 previously marked as Exhibit I.

21 Q. Let me know when you have that, Ms.
22 DeMarco, and have had a chance to look at it.

23 A. I had -- there's H up there. My exhibits
24 are not marked on my screen. It says like document
25 1, document 2, document 3. Do you know what

1 C. DEMARCO

2 document it is?

3 MR. KOH: Is it up yet, Nat?

4 MR. WALSH: I don't believe it is.

5 A. I do have document 7. Just give me a
6 minute.

7 Q. Sure.

8 A. Okay, Howard.

9 Q. Can you tell us what's previously been
10 marked as Exhibit I.

11 A. This is Exhibit I that I have up.

12 Q. Right. This is a letter which you were
13 copied on. It's dated December 12, 2018, also from
14 Sharon Locatell, purporting to do a valuation of the
15 property at 840 Atlantic Avenue, correct?

16 A. Yes.

17 Q. But it uses -- I think you would agree --
18 a different methodology; is that right?

19 A. Yes. This letter considers ground lease
20 comps. That's correct. That would have been in
21 accordance with the option rent addendum.

22 Q. Other than what you have told us about a
23 requirement of McDonald's or an accounting
24 requirement, is there any other reasons why
25 McDonald's opted to have two different valuations

1 C. DEMARCO

2 prepared?

3 MR. WALSH: Objection to the form.

4 Q. You can answer.

5 A. They were for two different purposes,
6 Howard.

7 Q. Okay.

8 A. So the land sales comparison approach
9 that I asked Sharon to prepare -- and I believe
10 these both have the same date on them --

11 Q. They do.

12 A. Yes. It's internally for the internal
13 approvals -- and I'm sure you have a copy of that --
14 that was in December, so I included the zoning, the
15 fair market value.

16 So it was for a different purpose. The
17 sales comparison approach was not done for the
18 formal process in accordance with the option rent
19 addendum.

20 The land sales comparison approach was
21 done for internal purposes to understand the range
22 and risk, highest and worst case scenario, based
23 on conversations with Sam.

24 So this report that you're looking at,
25 this letter, was something that started

1 C. DEMARCO

2 preliminarily. So this was done early in December
3 of 2018. The date of value per the lease is April
4 of 2019, so this was in the very early stages of
5 the process.

6 So there were two different reports
7 completed, and this was the beginning of the
8 process, Howard.

9 But I think what's important to note is
10 the sales comparison approach was done only for
11 the purposes of an internal review and approval to
12 confirm to exercise the option. It was not done
13 -- it wasn't -- it's not applicable. It's not
14 appropriate to be done for the process. It's not
15 an option to be done for the purpose.

16 Q. I appreciate that answer.

17 MR. KOH: Nat, can you please bring up
18 Number 16, which was previously been marked
19 as Exhibit L. Wait. That was the wrong
20 number. Number 21, Nat, previously marked as
21 Exhibit M. This is Exhibit 9.

22 Q. Take a moment to look at what's been
23 previously marked as Exhibit M on your Agilelaw
24 screen. Tell me when you have had a chance to
25 review it and we can ask some questions about it.

1 C. DEMARCO

2 A. Okay.

3 Q. Tell us what Exhibit M is that's on the
4 screen in front of you.

5 A. What is it called? It's called an Asset
6 Management Reacquisition Package.

7 Q. Is this a form that is standard at
8 McDonald's or was at the time it was completed?

9 A. It's a form that was completed at that
10 time. It was a standard form at that time, yes.

11 Q. And what do you understand the purpose of
12 completing this form to be?

13 A. The purpose is to -- for the asset
14 manager to submit a recommendation to the necessary
15 approvers on a decision.

16 Q. So you were the asset manager. Did you
17 prepare this form?

18 A. Yes, I did.

19 Q. And you prepared it and submitted it on
20 or about December 18, 2018? I think that's in the
21 top box.

22 A. So yes. Well, I signed it -- if you look
23 on the first page, I signed it on December 18th, so
24 that's when it was kicked off.

25 Q. These were done electronically; is that

1 C. DEMARCO

2 right?

3 A. Yes. I signed it on December 18th, so
4 that would be the correct date that it was kicked
5 off, yes.

6 Q. There are six people here who have signed
7 off by -- it appears to be DocuSign in the approval
8 section.

9 Can you go through each person's role
10 in approving this asset management reacquisition
11 package. So starting with Ms. Hartman, the first
12 one. What were her role in this approval?

13 A. I'm sorry. So back then, the field
14 office, real estate lead and development director
15 and finance manager, as well as the field vice
16 president, so those four signatures at that point in
17 2018 were still part of an approval process for a
18 reacquisition package.

19 Brooke was the real estate lead. She
20 worked for Rita Nocito, who was a development
21 director in 2018; Brian Cheung is the field
22 finance manager; Gino Potesta was the field vice
23 president.

24 So back in 2018, the approval process
25 for a package like this would require the field

1 C. DEMARCO

2 office signatures with those particular roles, and
3 they were the people in those roles.

4 And then because it was an unstated
5 rent, the rent had not yet been determined, it
6 would also require approval by a senior
7 development director through Crown as well as --
8 the last approver was the director of finance,
9 corporate finance, and I could spell his name.
10 It's Mark Hueliskoetter, H-U-E-L-S-K-O-E-T-T-E-R.

11 Q. Apparently all of these people who you've
12 just listed, in fact, approved the asset management
13 reacquisition package, correct?

14 A. They approved my recommendation to
15 continue with the option and not terminate the
16 lease.

17 Q. Okay.

18 And how does a tenure exception relate,
19 if at all, to an asset management reacquisition
20 package?

21 A. They're very different.

22 Q. Okay.

23 A. This package -- the purpose of this
24 package is to recommend that we not terminate the
25 lease and exercise the next option.

1 C. DEMARCO

2 Q. And the purpose of the tenure exception
3 is to allow for redevelopment where certain
4 information is not available; is that correct?

5 MR. WALSH: Objection to the form.

6 A. No, not correct.

7 Q. What's the purpose of a tenure exception?
8 Please refresh my recollection.

9 A. The tenure exception is for reinvestment
10 planning. As I had mentioned to Sam, we were doing
11 modernization across the US system, and all
12 restaurants were planning for modernization.

13 So for planning for modernization,
14 there's a balance between the amount of real
15 estate tenure you have as stated rent versus how
16 much money you want to spend.

17 So this site, although it had 20 years
18 of tenure, which was fantastic, it had one reset
19 for one five-year period. So three of the five
20 years were stated rent, state increases, but there
21 was one unstated option. So because of that, that
22 would be submitted as a tenure exception.

23 One was in reinvestment, Howard, and
24 one was to exercise the option. Two different
25 processes.

1 C. DEMARCO

2 Q. Right.

3 And as of December 18, 2018, what was
4 the status of the request for tenure exception
5 with respect to this restaurant at 840 Atlantic
6 Avenue?

7 A. I don't exactly recall what the status
8 was, although the restaurant modernization went
9 forward, started in January and then I believe was
10 completed in December, so I think based on the
11 preliminary information and the estimates that I
12 gave and recommended to the field office, they got
13 the waiver and exceptions to go forward with the
14 modernization. So that was already in process.

15 Q. You said -- and it's important that I
16 understand the dates here, so let's take our time.

17 You said the modernization started in
18 January and continued through December. Can you
19 tell me what years we're talking about.

20 A. I believe it started in 2018.

21 Q. So is it accurate that say that by
22 December of 2018 when you recommended the asset
23 management reacquisition package, the modernization
24 had already been completed or was close to being
25 completed?

1 C. DEMARCO

2 MR. WALSH: Objection to the form.

3 Q. Is that fair to say?

4 A. Can you repeat the question.

5 Q. Let me try to phrase it again.

6 At the time on December 18th when you
7 recommended for approval this asset management
8 reacquisition package, am I correct that the
9 modernization of this restaurant at 840 Atlantic
10 Avenue was, in fact, complete or almost complete?

11 A. The modernization started in January of
12 2018 and I believe continued through the end of the
13 year, so the decision to modernize the restaurant,
14 based on the approval from the US controller group
15 in the field, based on my estimate that I have given
16 them in October of 2017, I think they made the
17 decision because there was only one fair market
18 value reset.

19 There were three five-year options. So
20 we had tenure through 2039 and we only had one
21 fair market value reset. I believe these things
22 were happening at the same time, Howard, as I
23 think what you're asking me, so the store was --
24 the decision to modernize the restaurant, they
25 were already in the process of modernizing based

1 C. DEMARCO

2 on the information that I had done preliminarily
3 in October of 2017.

4 Q. So the order of operations, just to make
5 sure I have it right, is first McDonald's started to
6 modernize this restaurant at 840 Atlantic Avenue,
7 and then after that had been set, you then
8 recommended that the asset management reacquisition
9 package be approved; is that correct?

10 MR. WALSH: Objection to the form.

11 A. And I appreciate you don't understand
12 McDonald's internal process, but I had submitted a
13 recommendation to Brooke -- which I'm sure you have
14 a copy of. I think we looked at it earlier today --
15 from October of 2017. And often when we need a
16 tenure exception, the field office comes to me to
17 get an opinion and discuss what is the rent
18 potentially.

19 In that email, I gave that to Brooke in
20 October of 2017 what I thought the rent estimate
21 would be, and based on the fact of it being three
22 five-year options at stated increases with only
23 one rent reset with 20 years of tenure, I was
24 recommending at that point that we go forward with
25 the modernization.

1 C. DEMARCO

2 They don't have to happen exactly at
3 the same time. The decision to modernize was
4 done, I think, in the fourth quarter of 2017.
5 That's why they started in January of 2018. But I
6 was recommending they go forward with an almost \$2
7 million, 1.5 million reinvestment.

8 I was, in my mind, recommending even
9 back then -- I had not submitted the paperwork at
10 that time. I hadn't done all the preliminary
11 background work that you recall that happened in
12 October of 2017, and then there were -- and the
13 option is automatic unless McDonald's elects to
14 terminate.

15 Q. The first recommendation you made in
16 October 2017 was to modernize, and then in December
17 of 2018, you recommended that the reacquisition
18 package be approved, right?

19 MR. WALSH: Objection to the form.

20 Q. Is that correct?

21 A. So I submitted a recommendation to the
22 field office. I don't think it's a yes-or-no. I
23 submitted a recommendation to the field office based
24 on evaluating the rent and the market to go forward
25 with the modernization.

1 C. DEMARCO

2 And then this is the package that I
3 submitted because -- this is a package I submitted
4 to get the formal signatures in the process to
5 confirm that we were not going to be terminating
6 the lease and that, in effect, we were going
7 forward with a blind option.

8 That's why included in this package is
9 the fee value and the zoning detail that was
10 included in that -- that's all I was saying -- to
11 look at the worst case scenario.

12 Q. And the budget for the modernization was
13 between a million and a half and \$2 million?

14 MR. WALSH: Objection to the form.

15 A. It was -- yes. It was -- the
16 modernization, the last cost estimate I saw was
17 1 million 552 something.

18 Q. Okay.

19 A. It could have been more. That was the
20 last recap, cost recap I saw on the investment at
21 1 million 552 and change.

22 Q. Let's start to the second page of this
23 asset management reacquisition package that we
24 previously marked as Exhibit M.

25 Did you draft this proposal summary?

1 C. DEMARCO

2 A. I prepared this, Howard.

3 Q. Right. Okay.

4 Towards the bottom, you said:

5 Appraisal \$9.9 million; range 4 to 6 percent as
6 reflected.

7 Where did you get the \$9.9 million?
8 Was that from one of the December letters from Ms.
9 Locatell?

10 A. The land value, it says dash MAI. Do you
11 see that?

12 Q. Yes.

13 A. It says the MAI appraisal -- if you look
14 -- Howard, if you read that part of the package, it
15 defines what is below the box below.

16 Q. Just to make sure that we've tied this up
17 neatly, the MAI business appraisal was Ms. Locatell,
18 right?

19 A. Sharon Locatell is the MAI appraiser that
20 did that valuation for me, correct.

21 Q. Got it.

22 And you have a rent range that says
23 dash MAI 4 percent to 6 percent.

24 Why did you choose those ranges?

25 MR. WALSH: Objection to the form.

1 C. DEMARCO

2 A. That was given to me by -- this was,
3 again, all in the report dated December that you
4 have from Sharon Locatell. So that was the range
5 that she provided as a -- effectively a return rate
6 on the fee value that would be -- and you'll see
7 that I have boxes of 100 percent and 80 percent.

8 Q. Yes.

9 A. At the bottom, you'll see that it says 7
10 to 8 percent, and I put that in there just to be
11 worst case scenario for a potential range if there
12 was the formal process which could allow for the
13 average of 3.

14 It was just -- I extrapolated it out
15 further just to be -- for the risk.

16 Q. My question was who picked the 7 and 8
17 percent ranges, and I take it you did?

18 A. Yes.

19 Q. Okay.

20 A. The purpose of this was just for internal
21 approval, and it was just for sort of a worst case
22 scenario to look at "what if" scenarios, and so
23 that's what that was for.

24 Q. I would like to turn to page 4 of this
25 document. It's Bates number 6328, and there's a box

1 C. DEMARCO

2 that's headed Sales History.

3 Can you tell us what's represented in
4 that box.

5 A. Sorry. It was fuzzy. Hold on.

6 The sales history, that shows you the
7 trailing 12-month sales at that restaurant as of
8 that point in time going back years to 2013.

9 Q. Are sales gross sales there or some other
10 sales number?

11 A. That's the trailing 12-month gross sales.

12 Q. Thank you.

13 And then there's a box that says
14 Financials, and I would like to go through each
15 line here. The first line here says real estate
16 income.

17 What does that mean?

18 A. Real estate income is the income to
19 McDonald's from the operator.

20 Q. And where did the amount 537,974 come
21 from?

22 A. It's the rent calculation based on the
23 site.

24 Q. Is it computed as 14 percent of some
25 number?

1 C. DEMARCO

2 A. It's usually a percent. There's multiple
3 components to rent, and this is expressed as a
4 percentage of sales.

5 Q. So is this the real estate income to
6 McDonald's for this restaurant? Was that an
7 estimate or an actual number of what the real estate
8 income would be?

9 MR. WALSH: Objection to the form.

10 Q. Can you answer.

11 A. Can you repeat the question.

12 Q. Sure.

13 This \$537,974, is that the real estate
14 income for a particular year?

15 A. You'll see above that it says a primary
16 income and expense information for the period of
17 November 30th of 2018.

18 Q. Was that annual? Monthly? Daily?
19 That's what I'm trying to figure out.

20 A. That would be annually.

21 Q. Okay.

22 So McDonald's received from this
23 property in real estate income \$537,974 in real
24 estate income for the year ending November 30,
25 2018, right?

1 C. DEMARCO

2 MR. WALSH: Objection to the form.

3 Q. Is that what that's telling me?

4 A. This is telling you the real estate
5 income as of November 30, 2018, on a trailing
6 12-month basis. It's not a calendar.

7 Q. Got it.

8 A. Okay.

9 Q. Who received this money? McDonald's?
10 The franchisee? Was it split? Some other person?

11 MR. WALSH: Objection to the form.

12 A. This is real estate income to McDonald's.
13 This is McDonald's income as a --

14 Q. Got it.

15 A. It's a percentage of sales. 14 percent
16 of sales was the real estate income at that trailing
17 12-month period at that number 537,974.

18 Q. And all that money went to McDonald's,
19 right?

20 MR. WALSH: Objection to the form.

21 A. It's income to McDonald's. When you say
22 it went to McDonald's, I don't agree with how you're
23 saying that. That's income to McDonald's.

24 Q. Thank you for clarifying.

25 What is meant by rent expense?

1 C. DEMARCO

2 A. Rent expense is the rent we pay to the
3 landlord. In this case, it would be Sam
4 Rottenberg's company, I guess. That's per the
5 lease. That's the contractual amount per the lease.

6 Q. Okay. What is OCC expense?

7 A. I'm not sure.

8 Q. Do you know what net before D&I is?

9 A. That's real estate net before
10 depreciation and interest. So I think you take the
11 income and you subtract the expense. I'm sorry,
12 Howard. Total OCC expense, you'll see that that is
13 the same as the rent expense, so that is total
14 occupancy cost, I believe.

15 So in this case, there's no other --
16 there's just the rent expense on this to the
17 landlord. So the income less the expense is the
18 real estate net before depreciation and interest.

19 Q. Then the next line says Owner Predebt
20 Cash Flow.

21 What is that referring to?

22 A. That's -- the owner predebt cash flow
23 refers to the operator cash flow predebt, and you'll
24 see underneath that it says 12 months as of October
25 31st of 2018. So that was a month earlier.

1 C. DEMARCO

2 You'll see that's also a negative
3 number, and that's negative because the restaurant
4 was closed for a period of time during
5 modernization.

6 Q. And do you know how long the closure was?

7 A. I'm not sure.

8 Q. Okay.

9 What is meant by percentage rent? I
10 think I know. What is service fees?

11 A. Service fees is a fee that's charged for
12 all restaurants. At this restaurant, it opened in
13 1998 or 1999. 4 percent was the service fee.

14 Q. That is also income to McDonald's?

15 MR. WALSH: Objection to the form.

16 Q. Is that also --

17 A. The service fee is -- I wouldn't say it's
18 income. It's a fee that's paid by the operator for
19 certain services provided by McDonald's.

20 Q. So the fee is paid to McDonald's?

21 A. Correct.

22 Q. What's meant by total system cash flow?

23 A. Again, that's a math calculation, and I
24 didn't bring a calculator here with me today, but
25 it's the income less the expenses, so income and

1 C. DEMARCO

2 service fee less expenses should be your -- and less
3 the operator.

4 So system cash flow refers to cash flow
5 of the system which would be both the operator and
6 McDonald's Corporation.

7 Q. And can you tell me how it's split
8 between the operator and McDonald's Corporation.

9 A. I don't understand the question.

10 Q. Well, you said that -- let me get this
11 right -- system cash flow refers to the cash flow of
12 the system, which would be both the operator and
13 McDonald's Corporation.

14 I want to know how much was allocated
15 to the operator and how much was allocated to
16 McDonald's Corporation.

17 Can you tell that from this document?

18 A. No. I think this document is a snapshot
19 in time. I mean, you can look at the operator's
20 cash flow was negative here, right, and McDonald's
21 Corporation cash flow was positive.

22 But the restaurant was closed for
23 modernization, so I can't tell you what the split
24 of the system cash flow is for this restaurant
25 specifically based on this snapshot.

1 C. DEMARCO

2 Q. Let's turn to page 5, which is the next
3 page. There's a chart on that page which has some
4 numbers and it also has a column -- well, it has
5 several columns that say #value with an exclamation
6 point.

7 Can you tell us why it's presented that
8 way?

9 A. This is one page of the form and it
10 really doesn't reflect a site that's not a fair
11 market value reset. We don't know the rent when I
12 was submitting this.

13 You'll see that the lease -- it says
14 existing lease on the left and then it says
15 proposal exercise one five-year option on the
16 right. The reason it comes back #value is because
17 we don't know the value yet, so it could be
18 calculated.

19 Q. I understand.

20 A. This form wasn't built for unknowns, but
21 I wanted to make sure that we included this -- the
22 form is included on all deals. It doesn't get
23 selectivity included or not.

24 On the left-hand column, you'll see
25 that the end date is April 8th of 2019, and then

1 C. DEMARCO

2 at that point when I was submitting this in
3 December, there was four months, approximately,
4 left, and so that calculates the present value.

5 On the bottom on that same side, it
6 shows there are four five-year options with tenure
7 through 2039 and that the first five-year option
8 is FMV. And then the second, third, and fourth
9 options are, as stated, 15 percent increases with
10 tenure through 2039.

11 And the proposal this reacquisition
12 package was recommending was the fair market
13 value. It was the first option. It says #value
14 because it's a fair market. There is no rent in
15 there. So you really can't calculate down. It's
16 more to just outline that it was an unknown --

17 Q. Okay.

18 Was this asset management reacquisition
19 package ultimately approved?

20 A. I refer you to page 1 where the
21 signatures indicate when it was approved.

22 Q. So other than the people who signed here,
23 was anybody else's approval required?

24 A. The approvers that signed off on here are
25 the necessary approvers to exercise the -- and you

1 C. DEMARCO

2 can see on the first page of the asset reacquisition
3 package, there's a line that says proposed deal
4 type, non-stated rent, so I was recommending we
5 exercise a non-stated rent option, and it was
6 approved by the required approvers at that time.

7 Q. Is a non-stated rent the same option as a
8 blind option?

9 A. Not necessarily.

10 Q. Explain to me the difference.

11 A. Well, so a non-stated rent option can be
12 a blind option or not a blind option. It's a
13 function of when the rent for that option needs to
14 be determined.

15 If the rent for the option is
16 determined prior to the start of the option, then
17 it's -- or before we have to exercise the option
18 or make that decision, then it's not considered a
19 blind option.

20 It's a blind option if we have to make
21 the decision to exercise or terminate prior to the
22 rent determination for that option. Not all fair
23 market value options are blind options.

24 Q. Was this one or was it a non-stated rent
25 option that wasn't a blind option?

1 C. DEMARCO

2 MR. WALSH: Objection to the form.

3 A. This was a blind option and a non-stated
4 rent option, right, because they don't -- not all
5 non-stated rent options are blind.

6 In this case, this is a non-stated rent
7 option and it was a blind option. So we had to
8 make a decision. It was automatically extended
9 unless the tenant gave notice to terminate.

10 So we had to make the decision to
11 extend the lease or terminate the lease prior to
12 knowing what the rent was for that five-year
13 period.

14 Q. Before you recommended for approval this
15 asset management reacquisition package, did you
16 discuss that subject with David Kearns?

17 A. I review all my work plans with my
18 directors. So he -- yes. He was aware that I was
19 recommending we exercise the option.

20 Q. What, if anything, do you remember
21 discussing with Mr. Kearns about the exercise of
22 this option?

23 A. Well, this would have been back in, you
24 know, 2017 and 2018. I would have had -- I would
25 have given him an update on the status of my value.

1 C. DEMARCO

2 I would have given him an update on the fact we had
3 a new landlord who was trying to negotiate an exit
4 strategy for us and that he had, you know, without
5 any facts presented a very wildly crazy number.

6 I would make him aware of some of the
7 detail around that. Based on the fact that we had
8 20 years of tenure with three five-year options as
9 stated rent -- based on the fact that we had 20
10 years of tenure with 15 years as stated rent with
11 15 percent increases, so I went over with him that
12 I would be submitting this and what was my
13 decision and recommendation about --

14 I want to make sure if we don't
15 understand, I'm happy to repeat it. I discuss my
16 work plan with my director on all deals that I do,
17 and so I would have absolutely made him aware of
18 what I was recommending on this particular site.

19 Q. Let's turn to another area.

20 Who is George Michelle?

21 A. George Michelle is the franchisee of this
22 restaurant at 840 Atlantic Avenue.

23 MR. WALSH: I'm going to ask within the
24 next five minutes if we can take a lunch
25 break.

1 C. DEMARCO

2 (Whereupon, a lunch recess was taken.)

3 Q. Ms. DeMarco, where we left off before we
4 broke for lunch is I was starting to ask you about
5 George Michelle, and you told me he was the
6 franchisee of the restaurant at 840 Atlantic Avenue.

7 Does he operate sometimes through a
8 company called Michelle Enterprises?

9 A. I don't know his company.

10 Q. Is George Michelle associated with any
11 other McDonald's restaurants besides this one at 840
12 Atlantic Avenue?

13 MR. WALSH: Objection to the form.

14 Q. Is George Michelle a franchisee of any
15 McDonald's restaurants besides the one at 840
16 Atlantic Avenue?

17 A. I'm not sure where else he is an operator
18 at other restaurants.

19 Q. But do you know whether or not he has
20 other restaurants?

21 A. I know of one, yes, but I don't know of
22 how many he has or where he has them. It's not my
23 area, the franchising side.

24 Q. Whose area is it?

25 A. Franchising.

1 C. DEMARCO

2 Q. Is there a person in the New
3 York/Connecticut/New Jersey area who is responsible
4 for that at McDonald's?

5 MR. WALSH: Objection to the form.

6 A. I don't know who the franchising lead is
7 for that area you defined. I don't get involved in
8 franchising.

9 Q. Understood.

10 MR. KOH: Let's bring up Exhibit 27,
11 Nat.

12 MR. WALSH: It looks like it was
13 previously marked as Exhibit N.

14 MR. KOH: Correct.

15 Q. Have you ever seen any part or all of
16 Exhibit N, which is Document Number 10 in the Agile
17 platform?

18 MR. WALSH: Objection to the form.

19 Q. Just tell me if you have seen this
20 document.

21 A. Not before now, no.

22 Q. Okay.

23 There's a cover letter and some
24 attachments. I'd like to know whether you have
25 seen any of the attachments before.

1 C. DEMARCO

2 A. I'll go through and look at this and see.
3 How many pages is this? Oh, wow. I wouldn't been
4 privy to franchise documents. I'm going to go
5 through this.

6 Q. I would like you to scroll through it.

7 A. The first two pages is a letter from
8 Christine. I don't even know who she is. It says
9 Franchise Agreement on the top of 3.

10 Q. It has a franchise agreement and a number
11 of attachments. Before just now, had you seen the
12 franchise agreement for 840 Atlantic Avenue?

13 A. No, I did not.

14 Q. Okay. We can leave that document on the
15 screen or put it aside.

16 At the time you recommended the
17 modernization of the franchise at 840 Atlantic
18 Avenue, did you speak to anybody on the franchisee
19 side?

20 A. No, I did not. I didn't speak to anyone
21 on the franchisee leasing side.

22 Q. What about the actual franchise operator?
23 Did you speak to Mr. Michelle or anybody who worked
24 for or with him?

25 MR. WALSH: Objection to the form.

1 C. DEMARCO

2 A. I don't recall speaking with him at that
3 time, no. What period of time -- I mean, this has
4 been going on a couple of years. I would have had
5 conversations with him at some point.

6 Can you rephrase your question as to
7 the time period.

8 Q. Sure.

9 As you were making the decision to
10 recommend the modernization at 840 Atlantic
11 Avenue, did you speak to Mr. Michelle about that
12 subject?

13 A. No, I did not.

14 Q. Okay.

15 A. But just to clarify, Howard, that was --
16 the operator was aware that when he -- when
17 operators get a copy of the underlying lease, he
18 would know that he had a rent reset in the first of
19 the four- or five-year options, so he would know
20 that.

21 And I think at some point we would have
22 discussed -- I think even before October of 2017
23 we would have discussed as part of just vision
24 plan and operator planning that there was a rent
25 reset. I wouldn't have gotten into specifics with

1 C. DEMARCO

2 him. That's only discussed with finance.

3 MR. WALSH: Howard, I'm sorry. I made
4 an objection to that last question. I want
5 to make sure it was noted.

6 Thank you.

7 Q. You told us earlier for some period of
8 time, the restaurant at 840 Atlantic Avenue was
9 closed because it was being modernized, right?

10 A. I believe so, yes. I believe the
11 restaurant was closed for a portion of time for
12 modernization, yes.

13 Q. Who would interface with the operator
14 about the need to close for modernization?

15 A. The construction lead who is working with
16 the operator on the reinvestment. And just to give
17 you some understanding, because we're a restaurant
18 business, you can't be -- it's difficult to do
19 internal dining room improvements.

20 You're not going to start cooking in
21 your kitchen if you're doing a kitchen remodel. I
22 think the same holds true in a restaurant that
23 they would have to close for a period of time to
24 do the proper renovations and be careful that it's
25 done correctly and not be selling food at that

1 C. DEMARCO

2 time.

3 So our restaurants typically close for
4 a period of time during a renovation. That's not
5 uncommon.

6 Q. I understand. That's all handled through
7 the construction division at McDonald's? Is that
8 what you told me?

9 MR. WALSH: Objection to the form.

10 Q. Who handles that at McDonald's?

11 A. What is your question again?

12 Q. Who handles the facilitating of the
13 modernization of the restaurant at McDonald's? You
14 used the phrase, I believe, "construction lead." Is
15 that the point of contact between the operator and
16 McDonald's?

17 MR. WALSH: Objection to the form.

18 A. So McDonald's has -- with regard to
19 construction element, the construction -- the area
20 construction manager would be one of potentially,
21 you know, support for the operator.

22 And the area construction manager would
23 be the lead for -- you know, that's not their
24 title, but they would be the lead for coordinating
25 and facilitating the modernization of a particular

1 C. DEMARCO

2 restaurant.

3 Q. Who paid for the modernization of the
4 restaurant at 840 Atlantic Avenue, if you know?

5 MR. WALSH: Objection to the form.

6 A. I don't know how that's broken down.

7 Q. Okay.

8 MR. KOH: Let's bring up Number 28, and
9 that's previously been marked Exhibit O.

10 Q. Let me know when you have that in front
11 of you.

12 A. I have it in front of me. I'll just take
13 a minute to read it.

14 Q. Sure.

15 A. Okay.

16 Q. So tell us what Exhibit O is, please.

17 A. Exhibit O is a letter from McDonald's
18 Corporation to Tom Lee at Vanderbilt Atlantic
19 Holdings, LLC.

20 Q. Am I correct that the purpose of this
21 letter was to provide notice to Vanderbilt Atlantic
22 Holdings that the parties were to appoint their
23 appraisers and begin the FMV process?

24 MR. WALSH: Objection to the form.

25 Q. What is the purpose of this letter?

1 C. DEMARCO

2 A. Paragraph 3 states that this letter
3 constitutes notice pursuant to Exhibit G to the
4 lease, that the parties have been unable to reach
5 agreement. Agreement as to the FMV, period. I'm
6 just reading. I'll keep reading.

7 "Accordingly, the parties shall appoint
8 their appraisers. McDonald's has appointed
9 Appraisers and Planners."

10 So it was us planning with Sharon
11 Locatell with Appraisers and Planners. Then it
12 goes on to say more detail about the process in
13 the next paragraph. I'm not going to read it all.

14 Q. Is it fair to say this was the formal
15 beginning of the fair market value process
16 contemplated in the option rent addendum?

17 MR. WALSH: Objection to the form.

18 A. Can you repeat the question, Howard?

19 Q. Yes.

20 Is it fair to say that this was the
21 formal beginning of the fair market value process
22 contemplated in the option rent addendum?

23 A. I don't know that I understand your
24 question, but I think the letter is pretty clear in
25 the plain language of what the intent of the notice

1 C. DEMARCO

2 to the landlord, that we could not agree, Sam and I
3 couldn't agree, and that we were going to start the
4 formal process, that we all were going to start the
5 formal process.

6 Q. It is your understanding that this letter
7 went out on or about April 15, 2019?

8 A. The letter is dated April 15, 2019, via
9 certified mail return receipt requested.

10 Q. Okay.

11 MR. KOH: Please bring up Number 30,
12 which is an April 25, 2019, email previously
13 marked as Exhibit P.

14 Q. Let me know when you're ready for
15 questions on that.

16 A. Okay.

17 Q. Do you recognize Exhibit P as an email
18 that you received from Sharon Locatell?

19 A. Yes, Exhibit P is an email from Sharon
20 Locatell to me and Ellen Benderman, subject Tom
21 Tener, 840 Atlantic call.

22 Q. And Ms. Locatell told you that Mr. Tener
23 was pushing for the selection of the third
24 appraiser, correct?

25 MR. WALSH: Objection to the form.

1 C. DEMARCO

2 Q. Is that what it says?

3 A. I'd rather not read it, but yes. It
4 says: I spoke to Tom Tener. His side is pushing
5 for us to select the third appraiser.

6 Q. My question is: Are you aware of any
7 reason why McDonald's at this time wasn't prepared
8 to select -- or Ms. Locatell wasn't prepared to
9 select the third appraiser?

10 MR. WALSH: Objection to the form.

11 Q. Can you answer that question?

12 A. I'm not exactly clear why she was not --
13 I mean, the reason we had to select the -- to really
14 understand all this, we have to go back and
15 understand that -- I believe Tom had done a
16 valuation based on the land sales comparison
17 approach, so I don't think -- well, let me strike
18 that.

19 I'm considering time frames here. Her
20 response was: I told him I'm not ready, that I
21 need to do work, and I'll circle back with him the
22 first full week of May.

23 So I don't know exactly why she was not
24 ready. I know she was handling multiple other
25 formal matters, and so I think she wanted to

1 C. DEMARCO

2 complete her -- you know, her evaluation of
3 potential neutral thirds.

4 And she's pretty good about monitoring
5 critical dates, and so she was taking the time
6 that she was allowed per the lease to do her, you
7 know, research to get ready to recommend and
8 select a neutral third.

9 I think it's she said she wasn't ready.
10 I don't know why she wasn't ready, but I do recall
11 that she had multiple projects and matters going
12 on at this time, but she's incredibly diligent and
13 careful in monitoring dates, so she knew she had
14 time to further evaluate and select her
15 recommendation for the neutral third.

16 Q. Did you have discussions with Ms.
17 Locatell concerning who to select as the neutral
18 third?

19 A. I did not have any conversations with
20 Sharon Locatell about who to select as the neutral
21 third. That would be something that the appraisers
22 would do, not anything I would be involved in.

23 Q. Do you know if anybody else at McDonald's
24 had conversations with Ms. Locatell concerning the
25 selection of the neutral third?

1 C. DEMARCO

2 MR. WALSH: Objection to the form.

3 Q. You can answer.

4 MR. KOH: I asked if she knew.

5 A. The neutral third is selected, you know,
6 by each appraiser. Each party-appointed appraiser
7 comes up with a list of potential neutral thirds and
8 then the two party-appointed appraisers select a
9 neutral third.

10 There's no involvement from our side.
11 I can't speak to Sam's, but there was no
12 involvement on McDonald's side about who to select
13 for the neutral third. That's all within the
14 appraiser's scope of what they would be doing.

15 Q. So did there come a point in time where
16 Ms. Locatell said to you or anybody else in
17 McDonald's, if you know, in substance, here are some
18 of the people I wish to propose to Mr. Tener as
19 neutral thirds?

20 A. I don't recall. It wouldn't be uncommon
21 for her to advise that she had several, because you
22 also want to conflict out if someone has a conflict.
23 So it wouldn't be uncommon for her to tell me who
24 she's considering, but I don't have any input on her
25 ultimate decision of who to consider.

1 C. DEMARCO

2 Q. Do you have any specific recollection of
3 any of those kinds of conversations with respect to
4 this option rent addendum?

5 A. I don't remember any specific
6 conversations.

7 Q. Okay.

8 MR. KOH: Let's bring up a document
9 that's not been marked. Let's mark this as
10 Exhibit FF.

11 (Whereupon, an email dated 5/21/19 was
12 marked as Exhibit FF for identification, as
13 of this date.)

14 MR. KOH: It is an email from Carol
15 DeMarco to David Kearns dated Tuesday,
16 November 1, 2019. It's number 42.

17 Q. You should have FF in front of you.

18 A. I'm just opening it. Give me a minute to
19 familiarize myself.

20 Q. Sure. Let me know when you're ready to
21 answer some questions about it.

22 A. Bear with me a minute.

23 MR. WALSH: Just so I'm aware, are
24 these the attachments to that first email
25 that's the first page of this document?

1 C. DEMARCO

2 MR. KOH: I believe so. I can tell
3 that you the Bates numbers are sequential and
4 I think that the attachment description
5 matches.

6 MR. WALSH: Okay. I just wanted to
7 understand if that's how it was produced,
8 since our production would have separated all
9 that stuff out.

10 A. Okay.

11 Q. Is this an email that you sent to Dave
12 Kearns with a copy to Michael Meyer?

13 A. Yes. We are looking at an exhibit which
14 is an email from me to David Kearns copying Mike
15 Meyer regarding 840 Atlantic Avenue in Brooklyn.

16 Q. And you sent this email Tuesday, May 21,
17 2019, correct?

18 A. May 21, 2019, at 6:38 p.m. central.

19 Q. You asked for a discussion with Mr.
20 Kearns, right?

21 A. I was suggesting we have a call, yes.

22 Q. Did that call occur?

23 A. I do not recall, but I'm sure we had a
24 call. I keep my director updated on all projects,
25 so yes. I have multiple calls with my director.

1 C. DEMARCO

2 Q. Did you discuss 840 Atlantic Avenue in
3 Brooklyn and these attachments with Mr. Kearns in or
4 about May of 2019?

5 A. Hold on. I don't know if it says in here
6 when we scheduled the call. But it would have been
7 in that -- it would have been sometime after that
8 email was sent. I don't know exactly when it was.

9 Q. And who was on this call?

10 MR. WALSH: Objection to the form.

11 A. I don't recall exactly who was on the
12 call, Howard. You know, I -- it could have just
13 been Dave and I. I mean, I don't recall if Mike was
14 on that call or not.

15 Q. So in or around -- I'm sorry. Please
16 finish.

17 A. I don't want to speculate. I've had
18 calls with Dave to give him a status update and
19 background. It says: I would appreciate it if we
20 can schedule a call to discuss and give you
21 background and update.

22 So that was the purpose. It might have
23 just been Dave and I.

24 Q. What do you recall discussing with Mr.
25 Kearns concerning this property in or around May of

1 C. DEMARCO

2 2019?

3 MR. WALSH: Objection to the form.

4 And I just want to caution the witness
5 not to share any information that would be
6 protected by the attorney-client privilege,
7 including advice that may have been shared by
8 Mr. Meyer or a request for legal advice asked
9 by Mr. Meyer.

10 To the extent you can answer without
11 revealing privileged information, you can
12 feel free to do so.

13 Q. Please don't reveal any privileged
14 information, but in your previous answer you said
15 you didn't even know if Mike was on, so I don't know
16 how privileged it could be, but go ahead and answer
17 the question.

18 MR. WALSH: And she also said she
19 doesn't remember if she had a call, so --

20 MR. KOH: I would like the witness to
21 answer to the extent she can.

22 A. So I would have had a call with my
23 director to give him an update. And you can see by
24 the 65 pages included as attachments, I gave him
25 background, so it was really just a status update

1 C. DEMARCO

2 call, which I do regularly with my director on all
3 the deals I'm negotiating or that I'm handling.

4 I don't remember the specifics, but I
5 would have discussed the details, you know, just
6 an update and a status of where we were in the
7 process.

8 Q. Did Mr. Kearns, your director, give you
9 any instructions as to how to proceed?

10 A. No. We had -- Dave did not give me
11 instructions on how to proceed. I was giving him an
12 update on the status of the process.

13 I think the exhibit you showed me
14 before this exhibit or one of the exhibits was the
15 letter from Mike Meyer to Tom Lee advising that we
16 could not agree and that we were selecting our
17 appraiser.

18 So this is obviously -- this email is
19 after we had identified our party-appointed
20 appraisers, so I was just giving him an update,
21 which I do regularly on all the deals I negotiate.

22 I negotiate, you know, 30, 40 deals in
23 a given year and I give him regular updates on the
24 status of sites that I'm working on. What you're
25 showing me is my request for a call, "please

1 C. DEMARCO

2 provide him an update and background status."

3 Q. When you say you regularly give Mr.
4 Kearns updates, do you do that by email, by phone,
5 or in some other manner?

6 A. It could be email. It could be phone.
7 It could be email or phone. That would be the only
8 two. This is a common thing that I would do,
9 Howard, as part of my job, to provide an update,
10 background status of something I was working on.

11 Q. After you provided this update, did you
12 get any kind of feedback or response from Mr. Kearns
13 at all?

14 A. Can you repeat the question. I don't
15 understand your question.

16 Q. After you provided this update, did Mr.
17 Kearns respond to you, give you any kind of feedback
18 at all?

19 A. I don't recall. Again, I believe we had
20 a call because I requested a call and he's an
21 excellent director and he makes himself available
22 for his people. We had a call at some point. I
23 sent -- to give him detail in advance of the call.

24 But no, he didn't tell me to do
25 something after that. I don't understand your

1 C. DEMARCO

2 question.

3 Q. Did he tell or make a suggestion as to
4 how to proceed next?

5 A. No, he did not. I wasn't asking for
6 directions in this email.

7 Q. What was the point of the email, then?

8 A. "I would appreciate if we can schedule a
9 call and discuss and give me a background and
10 status."

11 It was just informational.

12 Q. Okay.

13 MR. KOH: Let's bring up the next
14 document, please. It's Number 53. That's
15 before previously marked as Exhibit W.

16 A. I'm just reviewing it, Howard, for a
17 minute.

18 Q. Sure.

19 A. Bear with me one second.

20 Okay. Thank you.

21 Q. So this is a letter to you from
22 Appraisers and Planners signed by Ms. Locatell dated
23 June 17, 2019.

24 Did you request this -- and it purports
25 to recommend or make a conclusion as to the fair

1 C. DEMARCO

2 market rental value at the premises.

3 Did you request this letter?

4 MR. WALSH: Objection to the form.

5 Q. I'll make it simple.

6 Did you ask Sharon Locatell to send you
7 this letter?

8 MR. WALSH: Objection to the form.

9 A. Sharon was retained as the appraiser in
10 this process, so this would be typical for her to
11 send us her, you know, this type of letter.

12 When you say did I request it, it's
13 almost like I requested it separate and distinct
14 from the process. That's not the case. This
15 was -- you know, she was retained as an appraiser
16 in this matter and she sent me this letter that
17 you're showing me right now with her opinions,
18 right.

19 Don't make me read all this.

20 Q. I'm not going to do all that.

21 A. W is Sharon -- and then I went to her
22 page 3, so she -- she's -- based on the option rent
23 addendum, she's completed an analysis of comparable
24 ground leases and concluded a value for the property
25 at 840 Atlantic, and that's communicated to me in

1 C. DEMARCO

2 this letter dated June 17, 2019.

3 MR. KOH: Let's bring up Exhibit 54,
4 please, which was previously marked as
5 Exhibit X.

6 A. I have it up. I'm just reviewing it.

7 Q. What's the date on the letter you have
8 up, to make sure it's the right one?

9 A. June 17th of 2019, and it's marked on the
10 bottom right as Exhibit X. That's the document I
11 have up before me, and it's 23 pages. Give me one
12 second.

13 Q. Now I have it as well.

14 A. Okay. So Exhibit W from Appraisers and
15 Planners dated June 17, 2019, is nine pages. And
16 then the follow-up, Exhibit X, also dated June 17,
17 2019, is 23 pages.

18 It includes more detail and
19 information. You'll see there's lots of pictures
20 around the comps, lots of detail. I just wanted
21 to call your attention to that.

22 Q. I understand that. My question is: Do
23 you understand why there's two different versions of
24 the June 17th letter?

25 MR. WALSH: Objection to the form.

1 C. DEMARCO

2 A. Can you repeat your question.

3 Q. You pointed out some differences between
4 these two signed letters from Ms. Locatell that are
5 both dated June 17, 2019. I guess my first question
6 is: Did you get both of these, Exhibit W and
7 Exhibit X, or did you only get one of them?

8 MR. WALSH: Objection to the form.

9 A. Appraisers and Planners has prepared both
10 of these letters, and I was copied on the second
11 one. I received both of them. I received the first
12 one that was nine pages and I also received the
13 second one that was 23 pages.

14 Do I understand the difference? Yes, I
15 understand the difference.

16 Q. Do you understand why there were two
17 different letters, though?

18 MR. WALSH: Objection to the form.

19 A. Yes, I understand why there were two
20 letters about the same topic. Because the second
21 letter is 23 pages and includes a lot of background
22 and detail on the properties that she used, the
23 ground leases that she used.

24 Q. And why wouldn't just one letter, the
25 more complete one, Exhibit X, suffice? Why were two

1 C. DEMARCO

2 created, if you know?

3 MR. WALSH: Objection to the form.

4 A. I don't want to speculate why she had
5 two. I can only speak to my experience that you
6 want to have the detail and the backup.

7 As you notice in Tom Tener's report, it
8 would say his work file. So this is detail that
9 would be something we would want to see but may
10 not be what you would present subsequently as just
11 your letter.

12 But I'm not -- I'm just saying based on
13 my experience, not for this case specifically.
14 I'm not exactly sure. But I can certainly tell
15 you I've read both of these letters. I understand
16 the difference in these letters. And Sharon did a
17 very thorough job analyzing ground lease comps in
18 accordance with the option rent addendum.

19 Q. How do you know that?

20 A. Because the option rent addendum
21 specifically calls out that comparable ground leases
22 would be used in the analysis.

23 Q. How do you know her job was thorough?

24 A. Well, we spent -- you know, she spent
25 time researching comparables, so I think she spent a

1 C. DEMARCO

2 considerable amount of time, and based on my at
3 least ten years' experience with her, everything's
4 she's prepared has been -- you know, she's very
5 diligent about being extremely thorough, and I
6 thought the work product that you have up on the
7 screen right now is very thorough with regard to the
8 detail. My opinion.

9 Q. Do you have any qualifications other than
10 your work experience for you to be able to opine on
11 the thoroughness of an MAI appraisal?

12 MR. WALSH: Objection to the form.

13 A. Can you repeat.

14 Q. What are your qualifications, if any, to
15 be able to opine on the thoroughness of an MAI
16 appraisal?

17 A. Again, I've ordered multiple MAI
18 appraisals in my role at McDonald's as an asset
19 manager in 15 years. And based on the appraisals
20 that I've read and reviewed, it was my personal
21 opinion I thought this was thorough.

22 I'm not an MAI appraiser. I'm not
23 claiming to be an MAI appraiser. I'm just
24 claiming based on my 15 years' experience. So,
25 Howard, my opinion of the thoroughness of her

1 C. DEMARCO

2 appraisal is not based on my -- I'm not an
3 appraiser. My opinion of her thoroughness is
4 based on my 15 years of experience in the five
5 boroughs and reading multiple appraisals from
6 other MAI appraisers as a point of comparison. I
7 think she's incredibly thorough.

8 Q. Let's go back to the second document we
9 looked at today, which was marked as number 1 as
10 Exhibit D in a previous deposition. It should be
11 number 1 on your screen. It's the option rent term
12 addendum. Turn to the second paragraph on the
13 second page.

14 Please tell me, based on your 15 years'
15 experience as an asset manager and all the
16 appraisals that you've read and reviewed, what the
17 meaning of that second paragraph is.

18 MR. WALSH: Objection to the form.

19 Q. You can answer.

20 MR. KOH: Well, it was answered and it
21 was I didn't have enough experience to
22 answer, so I'm probing that a little bit.

23 A. I'm trying to find where that is, Howard.

24 Q. It should be document number 1. Second
25 page, second paragraph beginning "rental value."

1 C. DEMARCO

2 A. What's your question?

3 Q. What does that paragraph mean based on
4 your 15 years of experience? Well let me ask it a
5 different way.

6 Based on your 15 years of experience
7 and the multiple amount of appraisals that you've
8 read and your ability to tell Ms. Locatell's work
9 was thorough, what is required in order to
10 properly appraise the property at 840 Atlantic
11 Avenue under the option rent addendum?

12 MR. WALSH: Objection to the form.

13 A. Do you want me to read the second
14 paragraph?

15 Q. I want you to tell me what an appraiser
16 has to do to in order to thoroughly and properly
17 appraise the property at 840 Atlantic Avenue as
18 provided under the option rent term addendum.

19 MR. WALSH: Objection to the form.

20 A. I'm not -- I can read this all to you if
21 you would like me to, Howard. It will take a while.

22 Q. What steps must the appraiser take? You
23 were able to determine Ms. Locatell's appraisal was
24 thorough, so how would a thorough appraisal be done
25 here according to this, the option rent term

1 C. DEMARCO

2 addendum?

3 MR. WALSH: Objection to the form.

4 A. The option rent addendum speaks to: The
5 rental value shall be established based upon a
6 definition of fair market rental value as the price
7 which an average well-informed tenant would pay and
8 an average well-informed landlord would accept
9 exclusive of tenant's improvements, knowing all the
10 uses to which the property can be put without duress
11 on either party.

12 Continued in paragraph 3: The standard
13 market data approach technique for valuing vacant
14 land shall be used by the appraisers. All
15 comparable leases shall be appropriately adjusted
16 and written reports shall indicate the reasons for
17 such adjustments so made.

18 I'm going to stop there. She had 11, I
19 believe, comparable leases that she made
20 adjustments to as part of this analysis.

21 Q. And the --

22 A. Howard, let me just offer something for
23 you. Typically when we -- you see an appraisal, we
24 might only get something with three comps or four
25 comps. The universe of comps might be very small.

1 C. DEMARCO

2 In this case she had 11 comparables
3 available in the universe to consider for this.
4 So it was much more extensive of an analysis in
5 the comparable data than what I had seen in the
6 past.

7 When I had gotten appraisals, it may be
8 three comps, four comps. This had 11 comparables
9 with adjustments made for each one. So just based
10 on the number of comparables she was unable to
11 uncover, comparable ground leases, the
12 adjustments she made. She took particular note to
13 the M11 zoning and the R6B zone, so she considered
14 all that as part of what she was analyzing and
15 adjusting.

16 Q. I would like to read the next sentence to
17 you. It says: If adequate comparable leases are
18 not available, then a land residual technique as
19 defined by the American Institute of Real Estate
20 Appraisers shall be used.

21 You see that, right?

22 A. Yes, I do. But, Howard, though, let me
23 just stop you for a second. So yes, it does say "if
24 adequate comparable leases are not available, then
25 the land residual technique as defined by the

1 C. DEMARCO

2 American Institute of Real Estate Appraisers shall
3 be used."

4 And so -- it goes on to say: The real
5 estate income component used in the residual
6 technique shall be an economic rental for a
7 hypothetical improvement, but in no event shall
8 any business income be considered in the analysis.

9 So it does provide, Howard, that if
10 comparable leases were not available, the
11 alternate approach was a land residual technique.
12 But that wasn't necessary here because there was
13 many ground lease properties available.

14 Even Tom Tener indicated at a meeting
15 on June 19th that he had 50 ground leases that he
16 looked at, but he elected to do a sales comparison
17 as opposed to adjusting ground leases.

18 So there were adequate ground leases
19 available for this assignment in setting the rent,
20 so there was no need to look at the land residual
21 technique.

22 Q. Who made the determination that there
23 were adequate ground leases available?

24 A. Sharon Locatell prepared the appraisal,
25 so she evaluated it in her professional MAI opinion

1 C. DEMARCO

2 that she had adequate ground leases available that
3 were similar in zoning, because it was the zoning as
4 of that date of value that would comparable ground
5 leases to be used.

6 So the appraisers would be the people
7 -- and I can't speak to Tom Tener. He said he
8 found 50 ground leases, but he didn't use any of
9 them. I'm not sure why he didn't use -- he didn't
10 use --

11 Q. We'll cut to the June 19th meeting and
12 what Tom Tener may or may not have said and in what
13 context he said it shortly.

14 I'm asking the question: Who made the
15 determination that there were adequate comparable
16 leases available?

17 A. For the report that Sharon Locatell
18 prepared from Appraisers and Planners, she would be
19 the one to identify if they were comparable based on
20 the zoning, based on the lease, based on New York
21 law if they were appropriate and can be used in this
22 case.

23 Q. Did you agree with Ms. Locatell that
24 there were adequate ground leases available?

25 MR. WALSH: Objection to the form.

1 C. DEMARCO

2 A. It wasn't my decision to tell her what
3 ground leases. I didn't give her any -- I didn't
4 tell her what ground lease to use. I would have no
5 input on that, Howard.

6 Q. And that's because only an MAI can make
7 that determination as to whether a particular ground
8 lease is a good comparable?

9 MR. WALSH: Objection to the form.

10 Q. You can answer.

11 A. Can you repeat your question.

12 Q. Is that because only an MAI can make the
13 determination that a particular ground lease is a
14 good comparable?

15 A. In this case, I would say the MAI would
16 be the one to -- Sharon, since she was the one
17 preparing the report, she would be the one to make
18 the decision if it was an adequate comparable based
19 on the lease, New York law, and the zoning.

20 Q. And Mr. Tener on behalf of the landlord
21 would make that determination?

22 MR. WALSH: Objection to the form.

23 A. I can't answer what Mr. Tener is doing
24 for Sam.

25 Q. Did you have an understanding that it was

1 C. DEMARCO

2 Mr. Tener who was supposed to make the determination
3 on behalf of the landlord as to whether there were
4 adequate ground lease comps?

5 A. I can't answer that.

6 Q. You said there was a meeting on June 19th
7 where Mr. Tener was present. That was June 19,
8 2019, right?

9 A. There was a meeting on June 19, 2019, at
10 Morris Missry's office, yes.

11 Q. Who was present besides you and Mr. Tener
12 and Mr. Missry?

13 A. Mike Meyer. So for McDonald's, it was
14 Sharon Locatell, Michael Meyer, and myself. For Sam
15 Rottenberg, it was Sam Rottenberg, Tom Lee, Tom
16 Tener, and Morris Missry.

17 Q. How did you get to this meeting?

18 A. I don't understand your question.

19 Q. Well, right now you're in the McDonald's
20 field office in Stamford, Connecticut, right?

21 A. Yes.

22 Q. Is that where you're based now or were
23 you based in Illinois or somewhere else?

24 MR. WALSH: Objection to the form.

25 Q. Where do you live?

1 C. DEMARCO

2 A. I live in Eastchester, New York.

3 Q. How long have you lived there?

4 A. 20 years.

5 Q. Did you drive to this meeting? Take the
6 train?

7 A. I believe I took the train to Grand
8 Central.

9 Q. How did Mr. Meyer get to this meeting, if
10 you know?

11 MR. WALSH: Objection to the form and
12 relevance.

13 A. I don't know how Mike --

14 Q. Okay.

15 Is he based in the New York area or is
16 he based somewhere else?

17 A. He's based somewhere else.

18 Q. Would that be in Illinois, if you know?

19 A. Our office is in Chicago. If you want to
20 know where our corporate office is, it's in Chicago.

21 Q. That's all I need to know.

22 So prior to meeting with all these
23 people in Morris Missry's office, did you meet
24 separately with Ms. Locatell?

25 A. Yes.

1 C. DEMARCO

2 Q. For about how long?

3 A. I don't recall.

4 Q. Was that on the same day of the meeting
5 or was it a few days before?

6 A. I don't recall.

7 Q. What do you recall?

8 A. It might have been the day before. Might
9 have been two days before. I don't know, Howard.
10 It was -- before the meeting, I definitely met with
11 her briefly.

12 Q. And briefly, when you met, what did you
13 talk about?

14 A. We talked about we were going to have a
15 meeting on June 19th. We talked about that Tom
16 Tener had prepared, you know, a land sales
17 comparison approach, which was not in accordance
18 with the lease, and so we just talked about that --
19 you know, what we knew so far and we were hopeful
20 that we were going to have a good meeting and be
21 able to try to find some common ground and have a
22 conversation with them.

23 It was more about -- I had already had
24 her detail. It was really what was the landlord
25 thinking, what did Tom prepare. And she updated

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2 us as to what Tom had done, which unfortunately it
3 was not in accordance with the lease. It was not
4 in accordance with the law. It wasn't a valid
5 appraisal, unfortunately.

6 We just talked briefly.

7 Q. At this time, had Tom provided a written
8 appraisal that you had determined was not valid?

9 A. I don't recall that I saw something from
10 Tom before the meeting, but I was aware that the
11 methodology Tom used was not in accordance with the
12 option rent addendum.

13 The option rent addendum specifically
14 speaks to analyzing comparable ground leases which
15 would be appropriately adjusted.

16 And from what I understood from Sharon
17 was that Tom prepared a land sale comparison
18 approach which was not even an option on the
19 lease.

20 Q. So your understanding of what Mr. Tener
21 did was based on what Sharon Locatell told you?

22 A. Based on her conversations with Tom.

23 Q. Was it based on anything else?

24 A. I don't know what she received from him.
25 Again, once we start the process, I'm not involved.

1 C. DEMARCO

2 It's the appraisers talking, so I'm not as involved.
3 So I don't know exactly what Sharon had at that
4 point.

5 Q. But all your information about what Mr.
6 Tener may or may not have done, had that come from
7 Sharon?

8 A. That's correct. Sharon is the one that
9 informed me Tom was looking at it based on a land
10 sales comparison approach, not based on ground
11 leases.

12 Q. Can you tell us what happened at the June
13 19, 2019, meeting at Morris Missry's office.

14 A. Can you repeat the question. What
15 happened?

16 Q. Yes. Tell us what happened at the June
17 19, 2019, meeting at Morris Missry's office.

18 MR. WALSH: Objection to the form.

19 A. So it was hostile from hello, Howard. It
20 was pretty aggressive, unnecessarily, in my opinion.
21 The purpose of the meeting was to speak to the
22 option rent addendum and the fair market rental
23 value determination and the methodology, the New
24 York law as encumbered by the lease.

25 And we very quickly turned into sort of

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2 an argumentative attack from Morris Missry to
3 Sharon, and then so there was a stop. We stopped
4 and tried to regroup and say, okay, let's just
5 stop. Let's let the appraisers discuss their
6 valuation.

7 So Tom Tener went first and he talked
8 about that he used a land sales comparison
9 approach, which was consistent with what I had
10 understood he did.

11 He indicated he used 50 ground leases
12 to come up with what he called a cap rate, which I
13 didn't understand if he could find 50 comparable
14 leases, I wasn't clear why he couldn't adjust
15 those. But we just listened.

16 So tom went through his analysis. I
17 think his total valuation for the land was
18 16,850,000, which it blew me away because Sam --
19 that was in June of 2019, and Sam purchased the
20 property, what, in October of 2018 for 7 million.

21 Now his appraiser's indicating it's
22 worth 16,850,000, and then he goes on to conclude
23 that he researched 50 comparable ground leases and
24 determined that an 8 percent cap rate is
25 applicable, which that's not how cap rates are

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2 used. If he's looking at a return rate, it
3 wouldn't be that.

4 I'm explaining to you what happened as
5 you requested. And then he concluded his value --
6 I'm doing it off the top of my head -- like a
7 1,348- for annual rent and 80 percent of that as
8 the rent to the landlord.

9 So we listened to him go through his
10 analysis. We responded. You know, there was
11 discussion that that was not a method that could
12 be used in accordance with the option rent
13 addendum, that the methodology that could be used
14 was either adjusting comparable ground leases.

15 We went over that previously, Howard.
16 We know the two methodologies that are permitted
17 in the option rent addendum, and what he had done
18 was neither of those.

19 So we objected to the methodology that
20 Tom used. We asked him if he did it as encumbered
21 by the McDonald's lease, and he said, no, he did
22 not or -- I don't know. I think he said he didn't
23 consider that.

24 Howard, Morris Missry objected to us
25 even considering the 936 Second Avenue case, and

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2 so there was a lot of back-and-forth discussion on
3 that.

4 So the headline was that Tom went over
5 his valuation and concluded 16,850,000, and I
6 believe at that meeting he said, no, he actually
7 didn't consider as encumbered by the lease.

8 So we listened and we objected and at
9 least just shared with the group our concerns that
10 the report was not in compliance with the lease
11 and that it needed to reflect as encumbered by the
12 lease and it did not do that and it wasn't a
13 methodology outlined as acceptable by the option
14 rent addendum.

15 So there was a lot of conversation that
16 was back and forth, and Morris disagreed with
17 everything we said.

18 Then Sharon attempted to go over her
19 methodology and Morris interrupted her every
20 several minutes, and it was very difficult for her
21 to even talk without -- it was very aggressive and
22 very hostile, Howard. I never in 28 years
23 experienced a lease or a meeting like that that
24 was that aggressive and hostile, unnecessarily.
25 We had contemplated getting up and leaving several

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2 times. It was just that aggressive.

3 We left the meeting again restating we
4 felt that the methodology that Tom had used was
5 not in compliance with the lease, that it's got to
6 be in accordance with the option rent addendum and
7 it needs to be, you know, as encumbered by the
8 lease considering the existing zoning as of the
9 date of value.

10 Sorry for the long -- but that's how
11 that went.

12 MR. KOH: Let's take a short break.

13 (Whereupon, there was a pause in the
14 proceeding.)

15 Q. At this June 19, 2019, meeting, did
16 anybody take any notes?

17 A. I don't know.

18 Q. Did you take any notes?

19 A. I don't remember if I took notes at the
20 meeting. There was not much to note about. It was
21 argumentative from the beginning, as I mentioned,
22 so -- I wouldn't write that about Morris, so I don't
23 recall if I took notes.

24 Q. Okay.

25 You mentioned something, I think,

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2 called the 936 Second Avenue case. Am I correct
3 about that?

4 A. I did mention the 936 Second Avenue case,
5 yes.

6 Q. Okay. And you said that Mr. Missry said
7 that that case didn't apply, right?

8 A. I can't speak to what he exactly said,
9 but he disagreed with our position that that case is
10 relevant in this process.

11 Q. And you believe the case was relevant?

12 A. Yes, I do.

13 Q. Tell me why.

14 MR. WALSH: I'm going to object insofar
15 as it calls for Ms. DeMarco to share the
16 contents of any privileged legal advice that
17 was given to her by counsel.

18 If you can answer that question without
19 divulging privileged information, you can.

20 Q. Can you answer the question following Mr.
21 Walsh's instruction?

22 A. Yes.

23 It was my understanding of the -- and
24 I'm not an attorney and I'm not an appraiser. I'm
25 just a businessperson with 15 years' experience in

1 C. DEMARCO

2 the New York City market, and my understanding of
3 the 936 Second Avenue case is that -- and I'm
4 paraphrasing. You probably have a copy of that
5 case. You could look at that.

6 I'm paraphrasing that unless it's
7 specifically stated to exclude the lease, then the
8 lease would be a relevant factor in the concluded
9 value.

10 Q. And how did you gain your understanding
11 of the 936 Second Avenue case?

12 MR. WALSH: Same instructions and
13 advice to my witness.

14 A. Can you repeat your question.

15 Q. How did you get this understanding of
16 this 936 Second Avenue case? If it's entirely what
17 McDonald's lawyers told you, I'd like to know that.
18 If you got it from another source, I'd like to know
19 what that other source was.

20 MR. WALSH: Carol, as a reminder, don't
21 reveal the contents of any privileged
22 discussions you may have had with McDonald's
23 counsel.

24 But if you have an understanding of
25 that decision from someone that is other than

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2 counsel, you can certainly share that without
3 waiving any privilege.

4 THE WITNESS: Thank you, Brendan.

5 A. Howard, I'm happy to answer. Can you
6 repeat the question. Then I will answer.

7 Q. Sure.

8 My question is: How did you gain your
9 understanding of the 936 Second Avenue case?

10 A. So I gained my understanding of the 936
11 Second Avenue case by appraisers several years
12 before in another rent reset case that KTR was part
13 of McDonald's witness group in acknowledging that
14 the 936 Second Avenue case was relevant.

15 So the appraiser -- I heard this from
16 an appraiser and then I read the language, so it
17 was in connection with the appraisal that the
18 language stated that if -- unless it specifically
19 excludes that the language for your option rent
20 addendum says it's to specifically exclude the
21 lease, then the lease needs to be considered as a
22 relevant factor in the --

23 (Reporter clarification.)

24 A. I think we need to restart that question
25 and answer.

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2 Q. Let me try this again.

3 A. Okay.

4 Q. Let me ask the question. The question
5 was: How did you gain your understanding of the 936
6 Second Avenue case?

7 A. From an appraiser.

8 Q. And who was that appraiser?

9 A. It was two appraisers. It was Sharon
10 Locatell and -- Sharon Locatell was the first person
11 who told me about it.

12 Q. And who was the second?

13 A. I believe it was KTR, a woman at KTR
14 firm.

15 Q. And who was KTR working for?

16 A. They were retained by McDonald's as an
17 expert witness in an arbitration matter in
18 Manhattan.

19 Q. Do you remember the location of the
20 McDonald's that was the subject of this arbitration?

21 A. It was 1560 Broadway in Manhattan.

22 Q. That's Times Square, right?

23 A. 1560 Broadway in Manhattan is in the
24 Times Square area. Times Square is bigger than one
25 site. It's not one site in Times Square.

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2 Q. Am I correct that the woman at KTR was
3 Theresa Nygard?

4 A. Yes, it was Theresa Nygard. And also
5 Terry Tener was involved as well. So both Terry
6 Tener and Theresa Nygard.

7 Q. Was one of the issues in this appraisal
8 the value of certain signage, if you recall?

9 A. I don't recall. I'm not comfortable. I
10 don't recall the specifics of that case. I wanted
11 to answer your question as to when I became aware of
12 the 936 Second Avenue case, and that, I think, is
13 what I answered.

14 Q. Yes, and I appreciate that. I think I
15 have some familiarity with this arbitration myself.

16 After this meeting on June 19, 2019,
17 concluded, what happened next with respect to the
18 fair market value appraisal process for 840
19 Atlantic Avenue?

20 MR. WALSH: Objection to the form.

21 Q. Can you answer the question?

22 A. Can you repeat the question.

23 Q. After the meeting on June 19, 2019,
24 concluded, what happened next with respect to the
25 fair market rental value appraisal process for 840

1 C. DEMARCO

2 Atlantic Avenue?

3 A. As a result of that meeting, I believe
4 there was a discussion and we were trying to work
5 through an agreement with the landlord side, Morris
6 Missry, and the landlord's group, the proper
7 methodology to value.

8 So we couldn't go forward with the
9 process because the process was already corrupted
10 because he used -- Tom used the wrong approach.

11 So we were trying to -- at the end of
12 meeting, there was discussion that we would try to
13 come to agreement on a couple of things. One, the
14 methodology that needed to be used in accordance
15 with the option rent addendum. Number two, that
16 it took into consideration the existing ground
17 lease, and that's where that 936 Second Avenue
18 matter was important.

19 And three, we were trying to work on
20 some agreement with the other side as to the
21 process for the neutral thirds, that the process
22 as described to us by Morris Missry in the meeting
23 was not our understanding of how the process of
24 the neutral thirds should work. And so we were
25 trying to work through, one, that Tom was going to

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2 revise his -- we were hopeful and believe Tom was
3 going to be preparing an appraisal in connection
4 with the option rent addendum, and two, reach some
5 kind of an agreement with them on the process for
6 the neutral thirds.

7 I'm going to stop there.

8 Q. Okay.

9 Do you recall if any kind of agreement
10 was reached?

11 MR. WALSH: Objection to the form.

12 Q. Was any kind of agreement reached, to
13 your knowledge?

14 A. I don't recall the specifics of any
15 agreement. I think there was discussion on both
16 parties of what needed to happen next, and I believe
17 that we were going to work towards an agreement
18 subsequent to that June 19th meeting.

19 That was the -- both parties were going
20 to try to work through an agreement understanding
21 McDonald's concerns, the landlord's concerns. But
22 I don't believe there was a -- I think there was
23 going to be some preparation of such an agreement.

24 I don't believe there was one as we
25 walked out of there. It was hard to get a full

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2 sentence in there.

3 Q. I understand that there wasn't an
4 agreement when you walked out.

5 My question is: Do you know if an
6 agreement was reached subsequent to the meeting?

7 MR. WALSH: Objection to the form.

8 A. I believe that -- I think there was
9 agreement on one aspects or two aspects. There was
10 not agreement on how to handle the neutral third.
11 So there was not agreement on that.

12 We were told that Tom Tener would
13 revise his appraisal and that he was going to be
14 using the land residual technique and -- I think
15 that was -- and had to be encumbered by the lease,
16 so he was going to -- they accepted and
17 acknowledged that it should be.

18 So, Howard, I believe there was
19 agreement that the other side agreed that the 936
20 Second Avenue case was relevant and that Tom Tener
21 would revise his appraisal to reflect as
22 encumbered by the lease.

23 But there was not, Howard -- very
24 importantly, there was not agreement with the
25 parties of how the neutral third was supposed to

1 C. DEMARCO

2 work, and we could talk about that.

3 Q. Did there come a time when you saw a
4 written appraisal prepared by Mr. Tener?

5 A. I believe I did. I don't recall exactly
6 when, but I believe I might have seen his revised
7 appraisal, which I believe included both his
8 original and his revised, and the numbers were
9 exactly the same.

10 His concluded value was exactly the
11 same under the land residual technique and under
12 the land sales comparison approach. Two different
13 techniques, one considering as uncumbered by the
14 lease, but he concluded the exact same value to
15 the dollar for both.

16 Q. And did you believe that was improper?

17 A. I believe that that was statistically
18 impossible.

19 Q. Do you have any training in statistics?

20 A. No. No, I do not.

21 Q. Why did you believe it was impossible?

22 A. Because they considered different
23 factors. So one considered as encumbered by the
24 lease and one did not, so you're not apples to
25 apples as far as your factors of consideration into

1 C. DEMARCO

2 the concluded value.

3 Q. How do you know that a different value
4 would result depending on which methodology you
5 used?

6 A. Can you repeat the question.

7 Q. Yes.

8 How do you know that if he used these
9 two competing methodologies, it would be
10 impossible for them to come up with the same
11 value?

12 A. Because again, one was including as
13 encumbered -- they had different considerations that
14 they were -- so one considered as encumbered by the
15 lease and one did not.

16 So again, I'm not an appraiser. 15
17 years' experience in the boroughs. I've reviewed
18 multiple appraisals. I've never seen someone do
19 two different methodologies and come up with the
20 exact same number to the dollar. I've just never
21 seen that.

22 I didn't know how that could be
23 possible when your factors of consideration are
24 very different.

25 Q. Did you ask anybody?

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2 A. Did I ask anybody what?

3 Q. Whether it was possible.

4 A. Did I ask anybody if what was possible?

5 Q. That -- all right.

6 Did you ask anybody if it was possible
7 that these two different appraisal methodologies
8 could come up with the same value?

9 A. I didn't ask anybody. We had
10 conversation that it seemed unusual that that could
11 be the case.

12 But again, it's my experience that, you
13 know, I've never seen two different methodologies,
14 especially when one's considering the encumbrance
15 of a 20-year lease be the exact same valuation to
16 the dollar of a methodology that does not reflect
17 as encumbered by the lease.

18 Q. You said we had conversations that it
19 seemed unusual.

20 Who did you have these conversations
21 with?

22 A. I discussed with Sharon. When I read
23 that, I said is that -- is that common that you
24 would see different methodologies with different --
25 I don't recall exactly, Howard, what I discussed

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2 with her.

3 But I did discuss when I read his
4 updated report, which I think was dated in
5 September of 2019 -- I'm not exactly sure.

6 I had a conversation with her about it.
7 I don't remember exactly what the conversation
8 was. I was very suspect and surprised to see that
9 Tom did that.

10 Q. As best as you can recall, tell me
11 everything that was said during this conversation
12 you had with Sharon Locatell.

13 MR. WALSH: Objection to the form.

14 A. I don't recall, Howard. It wasn't -- I
15 don't recall, Howard. It wasn't -- I don't recall
16 what the conversation specifically -- just again
17 that he did two methodologies, right?

18 He did the land sales comparison
19 approach not as encumbered by the lease. Then he
20 did the land residuals approach as encumbered by
21 the lease. And then they came out, concluded the
22 exact same valuation.

23 We did more than that. We did have
24 conversation about his land residual technique
25 and, you know, some of the assumptions he had in

1 C. DEMARCO

2 there seemed flawed.

3 Q. Have you now told me everything you can
4 remember about this conversation you had with Ms.
5 Locatell?

6 MR. WALSH: Objection to the form.

7 A. I just described to you what I recall
8 from my conversation with Sharon.

9 Q. Did you take any notes of this
10 conversation?

11 A. No, I didn't take any notes in the
12 conversation.

13 Q. Besides you and Sharon, who else
14 participated in this conversation, if anybody?

15 A. No one else participated in the
16 conversation that I recall.

17 MR. KOH: Let's bring up 67. It is a
18 letter from Appraisers and Planners to Ms.
19 DeMarco dated September 20, 2019. It's
20 marked as Exhibit BB from a previous
21 deposition.

22 A. I have it up. I'm just reviewing it.

23 Q. Okay.

24 A. Okay. Go ahead.

25 Q. Do you recognize this document?

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2 A. I don't recall, but -- I don't recall.

3 Q. Do you know if this document that was
4 dated September 20th was ever given to Mr. Tener?

5 A. Can you repeat your question. You're
6 asking if this was ever given to Tom?

7 Q. Yes.

8 A. I don't know.

9 Q. Okay.

10 MR. KOH: I've covered the areas I want
11 to cover in today's deposition.

12 Mr. Walsh, do you have questions?

13 MR. WALSH: If we could just take maybe
14 a ten-minute break. I want to review my
15 notes.

16 (Whereupon, there was a pause in the
17 proceeding.)

18 MR. WALSH: So I don't have any
19 questions, and as far as we're concerned, the
20 deposition is concluded.

21 MR. KOH: Ms. DeMarco, thank you very
22 much for your appearance today, and we
23 appreciate your time.

24 THE COURT STENOGRAPHER: Brendan, are
25 you ordering?

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2 MR. KOH: I will give it to you.

3 THE COURT STENOGRAPHER: Howard, do you
4 want to order an immediate rough?

5 MR. KOH: Yes, I'll take a rough.

6 (Whereupon, the within examination was
7 concluded. Time Noted, 3:17 P.M.)

8

9 STATE OF NEW YORK)

10) SS.:

11 COUNTY OF)

12

13 I have read the foregoing record of my testimony
14 taken at the time and place noted in the heading
15 hereof and I do hereby acknowledge it to be a true
16 and correct transcript of same.

17

18

19 _____
CAROL DEMARCO

20 Subscribed and sworn to before me

21 on this _____ day of _____, 2021.

22

23

NOTARY PUBLIC

24

25

2 I N D E X

3

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6

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2 C E R T I F I C A T E

3

4 I, Melissa Leonetti, RPR, a Notary
5 Public of the State of New York, do hereby certify:

6 That the testimony in the within proceeding was
7 held before me at the aforesaid time and place.

8 That said witness was duly sworn before the
9 commencement of the testimony, and that the
10 testimony was taken stenographically by me, then
11 transcribed under my supervision, and that the
12 within transcript is a true record of the testimony
13 of said witness.

14 I further certify that I am not related
15 to any of the parties to this action by blood or
16 marriage, that I am not interested directly or
17 indirectly in the matter in controversy, nor am I in
18 the employ of any of the counsel.

19 IN WITNESS WHEREOF, I have hereunto
20 signed this 3rd day of October, 2021.

21

22

23 *Melissa Leonetti*

24 Melissa Leonetti

25

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